# MONTANA ADMINISTRATIVE REGISTER



1978 ISSUE NO. 1

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amend- | ) | NOTICE OF PROPOSED AMEND- |
| ment of Rule 2-3.36(10)-S36000) | | MENT OF RULE 2-3.36(10)- |
| regarding late appeals to the | ) | S36000 (APPEALS - NOTICES) |
| State Tax Appeal Board | ) | NO PUBLIC HEARING CONTEM- |
| | ) | PLATED |

TO: All Interested Persons

1. On February 14, 1978, the State Tax Appeal Board proposes to amend rule 2-3.36(10)-S36000 which now provides for appeals and notices to the State Tax Appeal Board.

2. The proposed amendment would provide as follows:

(1) Remains the same.

(2) Remains the same.

(3) Any person, firm or corporation who receives property tax assessments after the first Monday in June may appeal therefrom directly to the State Tax Appeal Board by filing with the State Tax Appeal Board a notice of appeal (and a duplicate thereof with the Property Assessment Division of the Montana Department of Revenue) within 20 calendar days after receipt of the tax assessment. The notice of appeal shall state the date of receipt of the tax assessment list, the post office address of the taxpayer, shall specifically describe the property involved, and shall state the facts upon which it is claimed a reduction should be made.

3. The adoption of this rule is necessary so that the taxpayer will not be deprived of his right to appeal should he receive his assessment too late to appeal to the county tax appeal boards; and so that the State Tax Appeal Board may establish a deadline for such appeals.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than February 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent or twenty-five or more persons directly affected, a public hearing will be held at a later date.

6. The authority of the board to make the proposed rule is based on Section 84-705, R.C.M. 1947.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State _____, 1978.

BEFORE THE STATE AUDITOR
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of a rule pertaining to wage assignments | ) ) ) ) | NOTICE OF PROPOSED ADOPTION OF RULE (WAGE ASSIGNMENTS) NO PUBLIC HEARING CONTEMPLATED |

TO: All interested persons

1. On March 1, 1978, the State Auditor proposes to adopt a new rule reading as follows:

ASSIGNMENT OF PAYROLL DEDUCTIONS TO FINANCIAL INSTITUTIONS

(1) Form 513, "Wage Assignment", and Form 514, "Notice of Wage Assignment", will not be used when the assignee is a financial institution (bank, credit union, savings and loan association) which has been given a deduction code number by the Central Payroll Division and when the state employee-assignor has authorized the transfer of a fixed deduction from his wages each pay period to the assignee.

(2) In the case of an assignment as just described, the employee and his financial institution will initiate the assignment by executing the necessary portions of a Payroll Status Form. The financial institution will note on the back of the original white copy its acceptance of the assignment in the following terms:

> This assignment is accepted for each full pay period beginning after _____, 19__, until _____, 19__ or termination of the assignor's employment with the state of Montana, unless earlier cancelled or released by written notice from this institution given to the assignor and the State Auditor. Deliver warrants under this assignment to the person and address listed with our deduction code.
>
> If the assignor's wages are garnisheed or attached, it is understood that the State Auditor may withhold assigned payments due under this instrument until all interested parties or the court determine who is entitled to what part of the wages.
>
> (signature-title)
> for (name of institution)
> _____, 19__ at _____, Montana

(3) This form may be printed on the back of the white copy of the Payroll Status Form; until such time as a revised form is available, the institution will type the statement on the back of the white copy.

(4) The financial institution will then forward the Payroll Status Form back to the employee's agency, where copies will be forwarded or retained as indicated on the form.

2. The rationale for the proposed rule is that it will simplify paperwork by eliminating two forms in situations where they are unneeded.

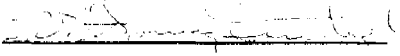
3. Interested persons may submit their data, views, and arguments concerning this proposed rule to the Office of the State Auditor, attention: Roy Phelps, State Capitol, Helena, Montana 59601. Written comments to be considered must be received no later than February 27, 1978.

4. If the State Auditor receives a request for a public hearing on the adoption of this rule from more than 25 persons who would be affected thereby, a public hearing will be held on appropriate notice. Ten percent of all persons directly affected would be more than 25 persons.

5. The authority of the State Auditor to adopt the proposed rule is based on section 83-903, R.C.M. 1947.

Dated this 16th day of January, 1978.

STATE AUDITOR



E. V. "Sonny" Omholt

Certified to the Secretary of State January 16, 1978

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

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|---|---|---|
| In the matter of the adoption of a rule for arbitration of disputes within library federations | ) ) ) | NOTICE OF PUBLIC HEARING For Adoption of a Rule (arbitration of disputes within library federations) |

TO: All Interested Persons

1. On April 7, 1978, at 10 a.m., a public hearing will be held in the conference room of the Montana State Library, 930 East Lyndale, Helena, Montana, to consider the adoption of a rule to provide for the arbitration of disputes over the distribution of grants among the participants of library federations.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rule would provide as follows:

ARBITRATION OF DISPUTES WITHIN FEDERATIONS

(1) Any disagreement among participants in a library federation regarding the application for or apportionment or utilization of funds or grants received from the Commission shall be referred in writing by any participating library or entity to the State Librarian. The State Librarian shall assign a member of the State Library staff to investigate the disagreement and to prepare a staff report to the Commission with a proposed decision.

(2) When the staff report and proposed decision are completed, copies shall be sent to the disputing participants in the federation and the matter placed on the agenda of the next Commission meeting. The Commission shall proceed to hear the parties and staff in accordance with the procedures set forth in ARM 10.10.011, subsections (4) through (8), and render a decision.

4. This rule is proposed to implement the Commission's responsibility under section 44-214.1, R.C.M. 1947, and to provide for breaking deadlocks when federation members apply for grants.

5. Interested parties may submit data, views or arguments concerning the proposed rule orally or in writing at the hearing.

6. William P. Conklin, Chairman of the Commission, will preside over and conduct the hearing.

7. The authority of the Commission to make the proposed rule is based on section 44-131(5), R.C.M. 1947.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State December 29, 1977.

Notice No. 10-3-10-3

BEFORE THE MONTANA FISH AND GAME COMMISSION

| | | |
|---|---|---|
| In the matter of the Amendment of Rule 12-2.26(1)-S2600 Relating to Public Use Regulations | ) ) ) | NOTICE OF PROPOSED AMENDMENT TO RULE NO PUBLIC HEARING CONTEMPLATED |

TO ALL INTERESTED PERSONS:

1. On the 24th day of February, 1978, the Commission proposes to amend Rule No. 12-2.26(1)-S2600 as follows (additions underlined, deletions interlined):

12-2.26(1)-S2600 PUBLIC USE REGULATIONS

(1) same

(a) through (r) same

(s) Swimming areas when designated are limited by ~~red~~ white and ~~yellow~~ orange buoys.

(remainder same)

(t) same

(u) same

(v) ~~IS HEREBY REPEALED~~

~~(w)~~ (v) same

~~(x)~~ (w) same

~~(y)~~ (x) No person shall camp overnight in a state administered recreation area without obtaining an overnight camping permit or having in his possession a seasonal camping permit or Montana State Golden Years Pass issued by the ~~D~~ director of ~~Fish and Game~~ or under his authority, when such area has been signed and posted as a fee camping area. The basic amount of fees for such overnight camping permit shall be as determined by the commission and posted by the ~~D~~ director or his duly authorized agent.

~~(z)~~ (y) same

(2) same

(3) same

2. The proposed amendment modifies Rule 12-2.26(1)-S2600 found on page 12-77.

3. The rationale for the adoption of this Rule's amendment is as follows: Amendment of this section is necessary to correct the color designation of buoys to conform with the present standards and to incorporate Montana State Golden Years Pass along with other camping permits.

4. Interested parties may submit their data, views, or arguments covering the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by

not later than the 21st day of February, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Dr. Wambach at the above stated address prior to the 21st day of February, 1978.

6. If the director receives requests for a public hearing on the amendment of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Montana Fish and Game Commission to amend the proposed rule is based upon Sections 26-104.9, 26-103.1, 62-306, R.C.M. 1947.

Dated this 5th day of January, 1978.

Robert F. Wambach, Director
Department of Fish and Game

BEFORE THE MONTANA FISH AND GAME COMMISSION

| | |
|---|---|
| In the matter of the Repeal of Rules 12-2.10(1)-S1000 through 12-2.10(1)-S1031 Relating to Ice Fishing and Rules 12-2.10(14)-S10140 through 12-2.10(14)-S10170 Relating to Sanitary and Public Health Regulations) | )NOTICE OF REPEAL )OF RULES )NO PUBLIC HEARING )CONTEMPLATED ) ) |

TO ALL INTERESTED PERSONS:

1. On the 24th day of February, 1978, the Commission proposes to repeal Rules 12-2.10(1)-S1000 through 12-2.10(1)-S1031 and Rules 12-2.10(14)-S10140 through 12-2.10(14)-S10170.

2. This action repeals Rules 12-2.10(1)-S1000 through 12-2.10(1)-S1031 found on page 12-20.1 and Rules 12-2.10(14) through 12-2.10(14)-S10170 found on page 12-41.

3. Rationale: Deletion of penalty provisions is mandated by HB44, enacted in 1977, amending Section 26-324 and omitting repetitious statements of the penalty provision. Proscription of littering activity by administrative rule is unnecessary since Section 32-4410,R.C.M. 1947, is enforcable by game wardens (see 3rd paragraph of that section). The present rules appear to be ineffective as to public health and sanitation since they have not been reviewed and approved pursuant to Section 26-104.9(2),R.C.M. 1947.

4. Interested parties may submit their data, views, or arguments covering the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 21st day of February, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Dr. Wambach at the above stated address prior to the 21st day of February, 1978.

6. If the director receives requests for a public hearing on the repeal of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Montana Fish and Game Commission to repeal the above rules is based upon Sections 26-103.1, 26-104.9, and 26-202.4, R.C.M. 1947.

Dated this 5th day of January, 1978.

Robert F. Wambach, Director
Department of Fish and Game

BEFORE THE MONTANA FISH AND GAME COMMISSION

In the matter of the Adoption ) NOTICE OF PROPOSED ADOPTION
of Rule 12-2.10(1)-S1032 Re- ) OF RULE
lating to Ice Fishing Regulations ) NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 24th day of February, 1978, the Commission proposes to adopt Rule 12-2.10(1)-S1032 as follows:

12-2.10(1)-S1032 GENERAL ICE FISHING REGULATIONS (1) Applicability. Any person who shall use, place, or cause to be placed an ice fishing shelter on the surface of the following bodies of water shall be subject to the provisions of this rule:

(a) Brown's Lake
(b) Georgetown Lake
(c) Deadman's Basin
(d) Lake Frances
(e) Bearpaw Lake
(f) Beaver Creek Reservoir
(g) Hauser Lake
(h) Lake Helena

(2) Definition of ice fishing shelter. An ice fishing shelter shall be any form of hut or shelter constructed of canvas, cardboard, paper, plastic, poles or boards, sheet metal, pressed wood or any other material, except those shelters or windbreaks constructed entirely of snow or ice.

(3) Identification of shelter. Each shelter owner must mark his shelter with his name and address, painted or otherwise permanently affixed to the shelter in legible letters not less than two (2) inches in height and plainly visible from outside of the shelter.

(4) Shelter access. Each shelter of closed type construction shall have a door readily opened from the outside for inspection by an officer while the shelter is occupied. The door shall not be latched from the inside.

(5) Unlawful use. It shall be prohibited for any person to use, fish from, or occupy an ice fishing shelter if such shelter does not conform to (3) and (4) of this section.

(6) Removal each day. Users of fishing shelters on the following waters shall remove such shelters in their entirety from the ice each day after fishing:

(a) Brown's Lake
(b) Georgetown Lake
(c) Deadman's Basin

(7) Removal after season. The owner of a fishing shelter shall remove the shelter from the area and from public property and properly dispose of it within 7 days after the close of ice fishing season or within 5 days of receiving notification to remove. If there is no closure or removal notice or spring thaw precedes the closure date, a fishing shelter must be removed from the ice before being made irretrievable and must be disposed of within 7 days.

(8) Transporting shelters. Transportation of shelters to and from the shoreline shall be only over authorized roads.

(9) Responsibility for clean-up. It shall be the responsibility of the owners and users of each fishing shelter to keep the immediate area around their shelter free from rubbish or debris. All litter and rubbish shall be gathered by each ice fisherman and either deposited in designated containers or taken with the ice fisherman daily when he leaves the area.

2. The proposed Rule replaces Rules 12-2.10(1)-S1000 through 12-2.10(1)-S1031 and Rules 12-2.10(14)-S10140 through 12-2.10(14)-S10170.

3. Rationale: Adoption of this single rule is prompted by the fact that the present ice fishing regulations are repetitious and require the occasional addition of other specific waters. By repealing individual sections and replacing them with one comprehensive rule, repetitious language can be avoided and additional waters regulated by inclusion in paragraph (1) and, when necessary, in paragraph (6).

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 21st day of February, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Dr. Wambach at the above stated address prior to the 21st day of February, 1978.

6. If the director receives requests for a public hearing on the adoption of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Montana Fish and Game Commission to adopt the above rule is based upon Sections 26-103.1, 26-104.9, 26-202.4, R.C.M. 1947.

Dated this 5th day of January, 1978.

Robert F. Wambach, Director
Department of Fish and Game

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of rule ARM 16-2.14(10)-S14481 regarding water quality standards and repeal of rule ARM 16-2.14(10)-S14480 regarding water quality standards | ) ) ) ) ) | NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE ARM 16-2.14(10)-S14481 AND REPEAL OF RULE ARM 16-2.14(10)-S14480 (Water Quality Standards) |

1. On March 10, 1978, at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in the Governor's Reception Room, Room 205, State Capitol, Helena, Montana, to consider the adoption of rule 16-2.14(10)-S14481 regarding the adoption of water quality standards for state waters, and repeal of rule 16-2.14(10)-S14480, which contains water quality standards in effect at the present time.

2. The proposed rule replaces rule 16-2.14(10)-S14480 currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

ARM 16-2.14(10)-S14481 WATER QUALITY STANDARDS

(1) Policy statement. The following standards are adopted to establish maximum allowable changes in water quality resulting from point or nonpoint discharges or from the activities of man and to establish limits for such discharges and activities. The board adopts the policy that best practicable treatment, best management practice, and control of wastes, activities, and flows are to be provided to maintain water quality at the highest possible levels; therefore, dissolved colloidal and suspended chemical substances, toxic materials, radioactivity, turbidities, color, odor and other deleterious substances shall be maintained at the lowest possible levels.

(2) Application of standards. The water quality standards are composed of water use descriptions and specific water quality standards [section (4)], general water quality standards [section (5)], nondegradation [section (6)], chlorination policy [section (7)], and water-use classifications [section (8)].

(a) General water quality standards apply to all state waters except where specific water quality standards are more applicable to a specific water-use classification, as specified in this rule.

(b) In order to carry out the objective of the rule, existing discharges to state waters shall be brought into compliance with the standards as soon as practicable.

(3) Definitions. Unless statutory definition or the context otherwise requires in this rule:

(a) "Best management practice" means a practice or combination of practices that is determined by the department or designated areawide planning agency after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective (based on technological

economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality standards.

(b) "Conductivity" is a measure of the ionized substances dissolved in water measured in μmhos/cm at 25° C.

(c) "Conduit" means any artificial or natural duct, either open or closed, capable of conveying liquids or other fluids.

(d) "Dewatered stream" means a perennial or intermittent stream from which water has been removed for one or more beneficial uses.

(e) "EPA" means the U. S. Environmental Protection Agency.

(f) "Intermittent stream" means a stream or portion of a stream that flows only in direct response to precipitation; it receives little or no water from springs and no long-continued supply from melting snow or other sources.

(g) "Naturally occurring" means conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams in existence as of July 1, 1971 are natural.

(h) "Mixing zone" means an area contiguous to a discharge where receiving water quality may meet neither all quality standards nor requirements otherwise applicable to the receiving water.

(i) "MPDES" means the Montana Pollutant Discharge Elimination System.

(j) "NPDES" means the National Pollutant Discharge Elimination System.

(k) "Nonpoint source" means the source of pollutants which originate from diffuse runoff, seepage, drainage, infiltration or flows which are not regulated by a discharge permit issued pursuant to the MPDES rule.

(l) "Pesticide" means insecticides, herbicides, rodenticides, fungicides or any substance or mixture of substances intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds and other forms of plant or animal life.

(m) "Sediment" means solid material settled from suspension in a liquid; mineral or organic solid material that is being transported or has been moved from its site or origin by air, water or ice and has come to rest on the earth's surface, either above or below sea level; or inorganic or organic particles originating from weathering, chemical precipitation or biological activity.

(n) "Settleable solids" means inorganic or organic particles that are being transported or have been transported by water from the site or sites of origin and are settled or are capable of being settled from suspension.

(o) "Sewer" means a pipe or conduit that carries wastewater or drainage water.

(p) "State waters" means any body of water, irrigation system or drainage system, either surface or underground. However, this rule shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters. The term "state waters" as used in this rule does not include underground water.

(q) "Storm sewer" or "storm drain" means a conduit that carries storm water and surface water and street wash from a residential, commercial or industrial area.

(r) "True color" means the color of water from which the turbidity has been removed.

(s) "Turbidity" means a condition in water or wastewater caused by the presence of suspended matter resulting in the scattering and absorption of light rays.

(4) Water-use description and specific water quality standards.

(a) General statement. Specific water quality standards along with general water quality standards in section (5) protect the beneficial water uses set forth in the water-use descriptions for the following classifications of water. Standards for organisms of the coliform group are based on a minimum of five samples obtained during separate 24-hour periods during any consecutive 30-day period analyzed by the most probable number or equivalent membrane filter methods.

(b) A-Closed classification.

(i) Water-use description. Water supply for drinking, culinary and food processing purposes suitable for use after simple disinfection. Public access and activities such as livestock grazing and timber harvest are to be contolled by the utility owner under conditions prescribed and orders issued by the department. Only those waters on which access is presently controlled by the utility owner have been classified as A-Closed. If other uses are permitted, the waters are to be reclassified A-1.

(ii) Specific water quality standards.

(A) The average number of organisms in the coliform group is not to exceed 50 per 100 milliliters.

(B) Dissolved oxygen standards are not applicable for the classification.

(C) No change from natural pH is allowed.

(D) No increase above naturally occurring turbidity is allowed.

(E) No increase above naturally occurring water temperature is allowed.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) No increase in true color is allowed.

(H) No increases of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, above naturally occurring concentrations, are allowed.

(I) No wastes are allowed which increase radioactivity above natural background levels.

(c) A-1 classification.

(i) Water-use description. Water supply for drinking, culinary and food processing purposes suitable for use after simple disinfection and removal of naturally present impurities. Water quality is to be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and agricultural and industrial water supply. Where the waters are used for swimming or other water-contact sports, analyses are to be made by the utility owner and the department to determine if a higher degree of treatment is required for potable water use.

(ii) Specific water quality standards.

(A) The average number of organisms in the coliform group is not to exceed 50 per 100 milliliters where demonstrated to be the result of domestic sewage.

(B) Dissolved oxygen concentration is not to be reduced below 7.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) No increase above naturally occurring turbidity is allowed except as permitted in section (5).

(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils, or floating solids which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than two units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the

department shall determine appropriate levels as conditions arise.

| Parameter | Maximum In-Stream Concentration (mg/l) |
|---|---|
| Ammonia (unionized as $NH_3$) | 0.02 |
| Arsenic (as As) | 0.01 |
| Barium (as Ba) | 1.0 |
| Berryllium (as Be) | 0.001 (If hardness exceeds 75 mg/l, then the limit is increased to 0.5) |
| Boron (as B) | 0.75 |
| Cadmium (as Cd) | 0.0005 (If hardness exceeds 75 mg/l, then the limit is increased to 0.0012) |
| Carbon Chloroform Extract (as CCE) | 0.2 |
| Chloride (as Cl) | 250 |
| Chlorine (Total Residual as $Cl_2$) | 0.002 |
| Chromium (as Cr) | 0.05 |
| Copper (as Cu) | 0.1 X 96 hour LC 50 |
| Cyanide (as CN) | 0.005 |
| Iron (as Fe) | 0.3 |
| Lead (as Pb) | 0.01 X 96 hour LC 50 but not to exceed 0.05 |
| Manganese (as Mn) | 0.05 |
| Mercury (as Hg) | 0.0002 |
| Nickel (as Ni) | 0.1 |
| Nitrate (as $NO_3$) | Actual limits determined by algal bioassay. |
| Nitrite (as $NO_2$) | 0.06 |
| Phenol | 0.001 above naturally occurring. |
| Phosphates (as $PO_4$) | Actual limits determined by algal bioassay. |
| Selenium (as Se) | 0.01 |
| Silver (as Ag) | 0.01 X 96 hour LC 50 with maximum of 0.05. |
| Sulfate (as $SO_4$) | 250 |
| Sulfide (as undissociated $H_2S$) | 0.002 |
| Total Dissolved Solids | 500 |
| Zinc (as Zn) | 0.01 X 96 hour LC 50 |

(d) B-1 classification.

(i) Water-use description. The quality is to be maintained suitable for drinking, culinary and food processing purposes after adequate treatment equal to coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 7.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 5 nephelometric turbidity units except as permitted in section (5).

(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

This applies to all waters in the state classified B-1 except for Prickly Pear Creek from McClellan Creek to the Montana Highway No. 433 crossing where a 2° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 65° F; within the naturally occurring range of 65° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than five units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials

including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Maximum In-Stream Concentration (mg/l) |
|---|---|
| Ammonia (unionized as $NH_3$) | 0.02 |
| Arsenic (as As) | 0.01 |
| Barium (as Ba) | 1.0 |
| Berryllium (as Be) | 0.001 (If hardness exceeds 75 mg/l, then the limit is increased to 0.5) |
| Boron (as B) | 0.75 |
| Cadmium (as Cd) | 0.0005 (If hardness exceeds 75 mg/l, then the limit is increased to 0.0012) |
| Carbon Chloroform Extract (as CCE) | 0.2 |
| Chloride (as Cl) | 250 |
| Chlorine (Total Residual as $Cl_2$) | 0.002 |
| Chromium (as Cr) | 0.05 |
| Copper (as Cu) | 0.1 X 96 hour LC 50 |
| Cyanide (as CN) | 0.005 |
| Iron (as Fe) | 0.3 |
| Lead (as Pb) | 0.01 X 96 hour LC 50 but not to exceed 0.05 |
| Manganese (as Mn) | 0.05 |
| Mercury (as Hg) | 0.0002 |
| Nickel (as Ni) | 0.1 |
| Nitrate (as $NO_3$) | Actual limits determined by algal bioassay. |
| Nitrite (as $NO_2$) | 0.06 |
| Phenol | 0.001 above naturally occurring. |
| Phosphates (as $PO_4$) | Actual limits determined by algal bioassay. |
| Selenium (as Se) | 0.01 |
| Silver (as Ag) | 0.01 X 96 hour LC 50 with maximum of 0.05. |
| Sulfate (as $SO_4$) | 250 |
| Sulfide (as undissociated $H_2S$) | 0.002 |
| Total Dissolved Solids | 500 |
| Zinc (as Zn) | 0.01 X 96 hour LC 50 |

(e) B-2 classification.

(i) Water-use description. The quality is to be maintained suitable for drinking, culinary and food processing purposes after adequate treatment equal to coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters, except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as is permitted in section (5).

(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5 F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(F) No increases above naturally occurring concentrations of floating solids, sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than five units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Maximum In-Stream Concentration (mg/l) |
|---|---|
| Ammonia (unionized as $NH_3$) | 0.02 |
| Arsenic (as As) | 0.01 |
| Barium (as Ba) | 1.0 |
| Berryllium (as Be) | 0.001 (If hardness exceeds 75 mg/l, then the limit is increased to 0.5) |
| Boron (as B) | 0.75 |
| Cadmium (as Cd) | 0.0005 (If hardness exceeds 75 mg/l, then the limit is increased to 0.0012) |
| Carbon Chloroform Extract (as CCE) | 0.2 |
| Chloride (as Cl) | 250 |
| Chlorine (Total Residual as $Cl_2$) | 0.002 |
| Chromium (as Cr) | 0.05 |
| Copper (as Cu) | 0.1 X 96 hour LC 50 |
| Cyanide (as CN) | 0.005 |
| Iron (as Fe) | 0.3 |
| Lead (as Pb) | 0.01 X 96 hour LC 50 but not to exceed 0.05 |
| Manganese (as Mn) | 0.05 |
| Mercury (as Hg) | 0.0002 |
| Nickel (as Ni) | 0.1 |
| Nitrate (as $NO_3$) | Actual limits determined by algal bioassay. |
| Nitrite (as $NO_2$) | 0.06 |
| Phenol | 0.001 above naturally occurring. |
| Phosphates (as $PO_4$) | Actual limits determined by algal bioassay. |
| Selenium (as Se) | 0.01 |
| Silver (as Ag) | 0.01 X 96 hour LC 50 with maximum of 0.05. |
| Sulfate (as $SO_4$) | 250 |
| Sulfide (as undissociated $H_2S$) | 0.002 |
| Total Dissolved Solids | 500 |
| Zinc (as Zn) | 0.01 X 96 hour LC 50 |

(f) B-3 classification.

(i) Water-use description. The quality is to be maintained suitable for drinking, culinary and food processing purposes after adequate treatment equal to coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 5.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 shall be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as is permitted in section (5).

(E) A 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 77° F; within the naturally occurring range of 77° F to 79.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 80° F; and where the naturally occurring water temperature is 79.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2°F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

This applies to all waters in the state classified B-3, except for the mainstem of the Yellowstone River from the Billings water supply intake to the water diversion at Intake, where a 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 79° F; within the range of 79° F to 81.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 82° F; and where the naturally occurring water temperature is 81.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. From the water diversion at Intake to the North Dakota state line, a 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 82° F; within the range of 82° F to 84.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 85° F; and where the naturally occurring water temperature is 84.5° F or greater, the maximum allowable

increase in water temperature is 0.5° F.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than five units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Maximum In-Stream Concentration (mg/l) |
|---|---|
| Ammonia (unionized as $NH_3$) | 0.02 |
| Arsenic (as As) | 0.01 |
| Barium (as Ba) | 1.0 |
| Berryllium (as Be) | 0.001 (If hardness exceeds 75 mg/l, then the limit is increased to 0.5) |
| Boron (as B) | 0.75 |
| Cadmium (as Cd) | 0.0005 (If hardness exceeds 75 mg/l, then the limit is increased to 0.0012) |
| Carbon Chloroform Extract (as CCE) | 0.2 |
| Chloride (as Cl) | 250 |
| Chlorine (Total Residual as $Cl_2$) | 0.01 |
| Chromium (as Cr) | 0.05 |
| Copper (as Cu) | 0.1 X 96 hour LC 50 |
| Cyanide (as CN) | 0.005 |
| Iron (as Fe) | 0.3 |
| Lead (as Pb) | 0.01 X 96 hour LC 50 but not to exceed 0.05 |
| Manganese (as Mn) | 0.05 |
| Mercury (as Hg) | 0.0002 |
| Nickel (as Ni) | 0.1 |
| Nitrate (as $NO_3$) | Actual limits determined by algal bioassay. |
| Nitrite (as $NO_2$) | 1.0 |
| Phenol | 0.001 above naturally occurring. |

| | |
|---|---|
| Phosphates (as $PO_4$) | Actual limits determined by algal bioassay. |
| Selenium (as Se) | 0.01 |
| Silver (as Ag) | 0.01 X 96 hour LC 50 with maximum of 0.05. |
| Sulfate (as $SO_4$) | 250 |
| Sulfide (as undissociated $H_2S$) | 0.002 |
| Total Dissolved Solids | 500 |
| Zinc (as Zn) | 0.01 X 96 hour LC 50 |

(g) C-1 classification.

(i) Water-use description. The quality is to be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and agricultural and industrial water supply.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 7.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 5 nephelometric turbidity units, except as is permitted in section (5).

(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than five units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleteri-

ous substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Average Daily Concentration mg/l | Maximum Instantaneous Concentration mg/l |
|---|---|---|
| Ammonia, Berryllium, Boron, Chlorine, Cyanide, Nickel, Nitrate, Nitrite, Phosphates, and Sulfide | | Same as section (4) (c) (ii) (G) |
| Total Copper (as Cu) | 0.050 | 0.090 |
| Dissolved Copper (as Cu) | 0.01 | 0.030 |
| Total Zinc (as Zn) | 0.100 | 0.200 |
| Dissolved Zinc (as Zn) | 0.05 | 0.080 |
| Total Iron (as Fe) | 0.300 | 1.300 |
| Dissolved Iron (as Fe) | 0.150 | 0.150 |
| Total Lead (as Pb) | 0.050 | 0.050 |
| Dissolved Lead (as Pb) | 0.050 | 0.050 |
| Total Cadmium (as Cd) | 0.0012 | 0.005 |
| Total Arsenic (as As) | 0.010 | 0.010 |
| Total Mercury (as Hg) | 0.0002 | 0.001 |

(I) The conductivity shall not exceed 1,000 µmhos.

(h) C-2 classification.

(i) Water-use description. The quality is to be maintained for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as is permitted in section (5).

(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F;

within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than five units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Average Daily Concentration mg/l | Maximum Instantaneous Concentration mg/l |
|---|---|---|
| Ammonia, Berryllium, Boron, Chlorine, Cyanide, Nickel, Nitrate, Nitrite, Phosphates, and Sulfide | | Same as section (5)(c)(ii)(G) |
| Total Copper (as Cu) | 0.090 | 0.180 |
| Dissolved Copper (as Cu) | 0.030 | 0.040 |
| Total Zinc (as Zn) | 0.300 | 1.000 |
| Dissolved Zinc (as Zn) | 0.080 | 0.140 |
| Total Iron (as Fe) | 1.300 | 2.200 |
| Dissolved Iron (as Fe) | 0.150 | 0.160 |
| Total Lead (as Pb) | 0.100 | 0.100 |
| Dissolved Lead (as Pb) | 0.100 | 0.100 |
| Total Cadmium (as Cd) | 0.010 | 0.010 |
| Total Arsenic (as As) | 0.010 | 0.016 |
| Total Mercury (as Hg) | 0.001 | 0.001 |

(I) The conductivity shall not exceed 2,000 μmhos.

(i) C-3 classification.

(i) Water-use description: While these streams may not support resident fisheries, they contribute water to reservoirs or higher quality streams that do support fisheries and they provide water for agricultural uses. Therefore, the quality shall be maintained suitable for the growth of non-salmonid fisheries and associated aquatic organisms, for the propagation and growth of waterfowl and furbearers, and for agricultural and industrial uses other than food processing.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 200 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 5.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 shall be maintained above 7.0.

(D) The maximum allowable increase in turbidity shall not exceed 20 percent of the naturally occurring level when measured as nephelometric turbidity units except as is permitted in section (5).

(E) A 3° F maximum increase above naturally occurring water temperature is allowed if the resulting temperature does not exceed 80° F. If the natural water temperature is 79° F or greater, the maximum allowable increase shall be 1° F. No change in temperature shall exceed a rate of 2° F per hour.

(F) No increases above naturally occurring concentrations of sediment, settleable solids or residues, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than ten units above naturally occurring color.

(H) Concentrations or levels of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, shall not exceed levels listed below or create acute or chronic problems. Levels listed below may be modified by the department only as outlined in section (5). For toxic or deleterious substances not listed, the department shall determine appropriate levels as conditions arise.

| Parameter | Maximum Instantaneous Concentration mg/l |
|---|---|
| Ammonia, Berryllium, Boron, Cyanide, Nickel, Nitrate, Phosphates, and Sulfide | Same as section (4)(c)(ii)(G) |
| Total Copper (as Cu) | 0.090 |
| Dissolved Copper (as Cu) | 0.030 |
| Total Zinc (as Zn) | 0.300 |
| Dissolved Zinc (as Zn) | 0.080 |
| Total Iron (as Fe) | 1.300 |
| Dissolved Iron (as Fe) | 0.150 |
| Total Lead (as Pb) | 0.100 |
| Dissolved Lead (as Pb) | 0.100 |
| Total Cadmium (as Cd) | 0.005 |
| Total Arsenic (as As) | 0.010 |
| Total Mercury (as Hg) | 0.002 |
| Chlorine (total Residual as $Cl_2$) | 0.05 |
| Nitrite (as $NO_2$) | 1.0 |

(I) The total man-induced dissolved solids load shall not cause a rise of over 200 μmhos above those naturally occurring and shall not cause the conductivity to exceed 2250 μmhos. Conductivity changes related to evaporative losses from reservoirs constructed after July, 1971 and to partial stream dewatering shall be considered man-induced.

(j) E Classification.

(i) Water-use description. The quality is to be maintained for agricultural and industrial water uses other than food processing.

(ii) Specific water quality standards.

(A) The average number of organisms in the fecal coliform group is not to exceed 2000 per 100 milliliters nor are 10 percent of the total samples during any 30-day period to exceed 4000 fecal coliforms per 100 milliliters, except as modified by section (7).

(B) Dissolved oxygen concentration is not to be reduced below 3 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.5 is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as is permitted in section (5).

(E) No increase in naturally occurring temperature which will adversely affect the use indicated is allowed.

(F) No increases above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which adversely affect the use indicated, are allowed.

(G) True color is not to be increased more than 25 units above naturally occurring color.

(H) Concentrations of toxic or deleterious substances, pesticides and organic and inorganic materials including heavy metals, are to be less than those demonstrated to be deleterious to livestock or plants or their subsequent consumption by humans or to adversely affect other indicated uses.

(I) The conductivity shall not exceed 3,000 μmhos.

(5) General water quality standards.

(a) Limitations imposed on discharges to state waters and on activities affecting the quality of state water shall be determined by the department and be based on the following:

(i) The state's policy of nondegradation of existing high water quality as described in Section 69-4808.2, R.C.M. 1947 and section (7) of this rule.

(ii) Present and anticipated beneficial uses of the receiving water.

(iii) The quality and nature of flow of the receiving water.

(iv) The quantity and quality of the sewage, industrial waste or other waste to be treated.

(v) The presence or absence of other sources of pollution on the same watershed.

(vi) The water quality effects of the discharges or activities on the receiving water and other state waters.

(b) Sewage is to receive a minimum of secondary treatment as required by the Federal Water Pollution Control Act Amendments of 1972 and subsequent amendments and as defined by 40 CFR 133 and subsequent amendments. Copies of 40 CFR 133 and subsequent amendments may be obtained at the department.

(c) Industrial waste is to receive, as a minimum, treatment equivalent to the best practicable control technology currently available (BPCTCA) as defined in 40 CFR Subchapter N and subsequent amendments. Copies of 40 CFR Subchapter N and subsequent amendments may be obtained at the department. In cases where BPCTCA is not defined by EPA, industrial waste is to receive, after maximum practicable in-plant control, a minimum of secondary treatment or equivalent.

(d) For design of disposal systems, stream flow dilution requirements are to be based on minimum consecutive seven-day average flow which may be expected to occur on the average of once in ten years. When dilution flows are less than the above design flow at a point discharge, the discharge is to be governed by the permit conditions developed for the discharge through the waste discharge permit program. If the flow records on an affected state water are insufficient to calculate a ten-year, seven-day low flow, the department shall determine an acceptable stream flow for disposal system design.

(e) State surface waters shall be free from substances attributable to municipal, industrial, agricultural practices or other discharges or activities that will:

(i) Settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines;

(ii) Produce odors or other conditions as to create a nuisance or render undesirable tastes to fish flesh or make fish inedible;

(iii) Create conditions which produce undesirable aquatic life.

(f) No activities shall be conducted such that the activities, either alone or in combination with other activities, will violate, or can reasonably be expected to violate, any of the standards; (e.g., in a reach of stream classified B-1, the total allowable cumulative increase to naturally occurring turbidity conditions in the reach is 5 nephelometric turbidity units).

(g) No activities shall be conducted which, either alone or in combination with other activities, will cause violations of water quality standards.

(i) Exceptions. Short-term construction or rehabilitation activities, where violations of water quality standards are unavoidable, may be authorized by the department if it

receives unanimous approval of the review committee established under Section 26-1510, et seq., R.C.M. 1947, or a public project receiving Department of Fish and Game approval under Section 26-1501, et seq., R.C.M. 1947. Authorization shall occur after the department receives written notification of the approval from the appropriate authority.

(ii) Short-term construction or rehabilitation activities which do not receive unanimous approval by the appropriate authority under (g)(i) above and other projects not controlled by the laws mentioned in (g)(i) may be authorized by the department under conditions as it prescribes.

(h) Methods of sample collection, preservation and analysis used to determine compliance with the standards are to be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or in accordance with tests or procedures that have been found to be equally or more applicable by the EPA or its successor agency as set forth in 40 CFR 136 and subsequent amendments. Copies of 40 CFR 136 and subsequent amendments may be obtained at the department.

(i) Operators of water impoundments operating prior to July, 1971, that cause conditions harmful to prescribed beneficial uses of state waters, shall demonstrate to the satisfaction of the department that continued operations will be done in the best practicable manner to minimize harmful effects. New water impoundments shall be designed to provide temperature variations in discharging water that maintain or enhance the existing propagating fishery and associated aquatic life. As a guide, the following temperature variations are recommended: Continuously less than 40° F during the months of January and February, and continuously greater than 44° F during the months of June through September.

(j) Leaching pads, tailing ponds or holding facilities utilized in the chemical processing of ore must be located and constructed in such a manner and of such materials so as to prevent the seepage or spillage of any process solution which may reach surface waters. The department may require that a monitoring system be installed.

(k) Dumping of snow from municipal or parking lot snow removal activities directly into waters of the state is prohibited unless authorized by the department.

(l) Discharges to state waters may be entitled a mixing zone as determined by the department; provided concentrations of discharge materials in such zones shall not block the movement of fish or other aquatic organisms.

(m) Until such time as minimum stream flows are established for dewatered streams, the minimum treatment requirements for discharges to dewatered receiving streams are to be no less than the minimum treatment requirements prescribed by the department.

(n) Treatment requirements for discharges to intermittent streams are to be no less than the minimum treatment requirements prescribed by the department.

(o) Pollution resulting from storm drainage, storm sewer discharges, and non-point sources, including irrigation practices, road building, construction, logging practices, overgrazing and other practices, are to be eliminated or minimized as ordered by the department.

(p) Application of pesticides in or adjacent to state waters is to be in compliance with the labeled direction, and in accordance with provisions of the Montana Pesticides Act (Title 27, Chapter 2, R.C.M. 1947) and the Federal Environmental Pesticides Control Act (Public Law 92-516). Excess pesticides and pesticide containers are not to be disposed of in a manner or in a location where they are likely to pollute state waters.

(q) The following radiological standards shall apply to all waters except those classified as A-Closed:

(i) The average dissolved concentrations (including the naturally occurring or background contribution) of iodine 131, radium-226, strontium-89, strontium-90 and tritium are not to exceed the following concentration limits:

| | |
|---|---|
| Iodine-131 | 5 pCi/L |
| Radium-226 | 1 pCi/L |
| Strontium-89 | 100 pCi/L |
| Strontium-90 | 10 pCi/L |
| Tritium | 3,000 pCi/L |

For all other radionuclides, the average dissolved concentration limits are to be 1/150 of the corresponding maximum permissible concentration in water for continuous occupational exposure as recommended by the National Committee on Radiation Protection (National Bureau of Standards Handbook 69 or subsequent revisions).

(ii) For a mixture of radionuclides, the following relationship is to be satisfied:

$$\frac{C_1}{L_1} + \frac{C_2}{L_2} \quad . \quad . \quad . \quad + \frac{C_n}{L_n} \quad \leq \quad 1.00$$

C denotes the average concentration of the respective radionuclide, and L denotes its concentration limit.

(iii) Where alpha emitters, strontium-90, radium-228, iodine-129, iodine-130 and lead-210 are known to be absent, routine analyses for dissolved gross beta radioactivity (excluding potassium-40 contribution) may be employed to monitor and show compliance with this standard (except for tritium) as long as the gross concentration does not exceed 100 pCi/L. When these conditions are not met, routine quantitative analyses of individual radionuclides are to be performed to show compliance. Except in cases where tritium from other than natural sources is known to be absent, routine tritium analyses are to be performed to show compliance. (Note: "Absence"

means a negligibly small fraction of the specific concentration limit, where the limit for unidentified alpha emitters is taken as the limit for radium-226.)

(iv) For radionuclides associated with suspended material in transport, the average concentration limits are to be 1/150 of the corresponding maximum permissible concentration in water (insoluble form) for continuous occupational exposure as recommended by the National Committee on Radiation Protection. In-stream sedimentation of these materials is not to produce solids beds that are not in compliance with subsections (q)(i) and (q)(ii) (because of leaching) and/or excessive accumulation in native flora and fauna.

(v) Average concentrations are to be computed from monitoring data acquired during the previous 12 months; maximum concentrations are not to exceed three times the average concentration limits specified.

(vi) Variances from concentration limits specified will be permitted only if the contributing source is non-controllable or a natural source. Best available treatment must be provided for man-made discharges, and the exposure received by affected population groups must be within established dose limits.

(r) No wastes are to be discharged and no activities conducted which, either alone or in combination with other wastes or activities, will result in the dissolved gas content relative to the water surface to exceed 110 percent of saturation.

(s) Bioassay median tolerance concentrations are to be based on latest available research results for the materials, by bioassay tests procedures for simulating actual stream conditions as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association, or in accordance with tests or analytical procedures that have been found to be equal or more applicable by EPA. Bioassay studies are to be made using the most sensitive local species and life stages of economic or ecological importance; provided other species whose relative sensitivity is known may be used when there is difficulty in providing the most sensitive species in sufficient numbers.

When specific application factors are not available, the factor is to be determined by using methods as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association.

(t) The department may raise certain metal limits addressed in section (4) on specific state waters if it can be shown to the department's satisfaction that the limits established to protect aquatic life are more stringent than necessary. Any request for a relaxation of metal limits must be justified by the use of an acceptable bioassay technique conducted with the use of the specific receiving stream.

(u) In some cases, particularly in eastern Montana, waters have been classified at a higher level than can be realistically reached during a substantial portion of the year, due to naturally occurring conditions. As the quality of these waters is marginal or unsuitable for many of the classified uses of the waters at least for a portion of the year, the waters will be maintained in the best condition possible for these uses when no better source of water is available.

(v) Where present standards are exceeded, the department, through its MPDES and non-point source programs, shall attempt to reduce the parameters exceeded through BPCTCA and Best Management Practices.

(6) Nondegradation.

(a) All streams and lakes of the State are considered "high quality waters" and are subject to the State's nondegradation policy. Any state waters, whose existing quality is higher than the established water quality standards, shall be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters.

(b) Economic and social exceptions.

(i) New connections to a public sewerage system may be allowed up to department approved limits provided that the public system is meeting its effluent limitations or established compliance schedule.

(ii) In cases where EPA New Source Performance Standards allow discharge to surface waters.

(iii) An expanding development may be allowed to increase its volume of discharge if the total load of pollutants does not exceed the load established in its MPDES or NPDES permit.

(iv) Any new or expanding development not covered by the above shall provide the following:

(A) For organic wastewater including but not limited to domestic sewage or meat packing waste, there shall be no discharge directly to state surface waters. An approved system of treatment followed by land disposal at an acceptable site is recommended.

(B) For inorganic wastewaters including but not limited to mining and milling wastewaters, treatment and maximum recycling of wastewater shall be practiced. Concentrated wastewaters shall be evaporated or placed at a location where there is minimal opportunity for surface or groundwater pollution.

(7) Chlorination Policy. This policy recognizes the toxicity of chlorine at low concentrations to fish and other aquatic life, and the minimal impact of pathogenic organisms on public health in recreational waters during colder water temperatures.

(a) Chlorination or other means of disinfection of sewage

shall only be required under the following conditions:

(i) to meet the fecal coliform standards in all state waters during the period April 15 to October 15 where the fecal coliforms are primarily due to sewage discharges;

(ii) to meet the coliform standards on A-Closed and A-1 waters during the entire year;

(iii) to prevent the fecal coliform bacteria at a water supply intake on a classified B water from exceeding an average of 1,000 per 100 milliliters or 10% of the samples from exceeding 2,000 per 100 milliliters during any 30-day period and where the fecal coliforms are primarily due to sewage discharges;

(iv) during other conditions found necessary by the department to protect public health.

(b) Where the discharger wishes to change the fecal coliform limits, it shall be the discharger's responsibility to request a change in its MPDES or NPDES permit. Substantiating data including, but not limited to coliform content without chlorination, shall accompany the request.

(8) Water-use classifications.

(a) NATIONAL PARK, WILDERNESS AND PRIMITIVE AREA WATERS

(i) All waters even if classifications listed below imply or state otherwise . . . . . A-1

(b) CLARK FORK OF THE COLUMBIA RIVER DRAINAGE

(i) Clark Fork River drainage except the Flathead River drainage and waters listed below . . . . . B-1

(A) Warm Springs drainage to Myers Dam near Anaconda . . . . . A-1

(B) Silver Bow Creek mainstem from Anaconda Company MPDES discharges at Butte to Warm Springs Creek . . . . . E-1
(Tailings pond and drainage through Anaconda Company operation to this point has no classification)

(C) Yankee Doodle Creek drainage to and including the North Butte water supply reservoir . . . . A-Closed

(D) Basin Creek drainage to and including the South Butte water supply reservoir . . . . . A-Closed

(E) Clark Fork River mainstem from Warm Springs Creek to Cottonwood Creek (near Deer Lodge) . . C-2

(F) Clark Fork River mainstem from Cottonwood Creek to the Little Blackfoot River . . . . . C-1

(G) Tin Cup Joe Creek drainage to the Deer Lodge water supply intake . . . . . A-Closed

(H) Georgetown Lake and tributaries above Georgetown Dam (headwaters of Flint Creek drainage) . . A-1

(I) Fred Burr Lake and headwaters from source to the outlet of the lake (Philipsburg water supply) . . A-Closed

(J) South Boulder Creek drainage to the Philipsburg water supply intake . . . . . A-1

(K) Rattlesnake drainage to the Missoula water supply intake . . . . . A-Closed

(L) Packer and Silver Creek drainage to the Saltese water supply intakes . . . . . A-1
(M) Ashley Creek drainage to the Thompson Falls water supply intake . . . . . A-Closed
(N) Pilgrim Creek drainage to the Noxon water supply intake . . . . . A-1
(ii) Flathead River drainage above Flathead Lake except waters listed below . . . . . B-1
(A) Essex Creek drainage to the Essex water supply intake . . . . . A-Closed
(B) Stillwater River mainstem from Logan Creek to the Flathead River . . . . . B-2
(C) Whitefish Lake and its tributaries . . . . . A-1
(D) Whitefish River mainstem from the outlet of Whitefish Lake to the Stillwater River . . . . . B-2
(E) Haskill Creek drainage to the Whitefish water supply intake . . . . . A-1
(F) Ashley Creek mainstem from Smith Lake to bridge crossing on the airport road about 1 mile south of Kalispell . . . . . B-2
(G) Ashley Creek mainstem from bridge crossing on airport road to the Flathead River . . . . . C-2
(iii) Flathead Lake and its tributaries from Flathead River inlet to U.S. Highway 93 bridge at Polson, except Swan River and portions of Hellroaring Creek as listed below, but including Swan Lake proper and Lake Mary Ronan . . . . . A-1
(A) Swan River drainage (except Swan Lake proper) . . . . . B-1
(B) Hellroaring Creek drainage to the Polson water supply intake . . . . . A-Closed
(C) Remainder of Hellroaring Creek drainage . . B-1
(iv) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed below . . . . . B-1
(A) Second Creek drainage to the Ronan water supply intake . . . . . A-Closed
(B) Crow Creek mainstem from road crossing in Section 16, T20N, R20W to the Flathead River . . . B-2
(C) Little Bitterroot River mainstem from Hubbart Reservoir dam to the Flathead River . . . . . B-2
(D) Hot Springs Creek drainage to the Hot Springs water supply intake . . . . . A-Closed
(E) Hot Springs Creek mainstem from the Hot Springs water supply intake to the Little Bitterroot River . . . . . E-1
(F) Mission Creek drainage to the St. Ignatius water supply intake . . . . . A-1
(G) Mission Creek mainstem from U.S. Highway No. 92 crossing to the Flathead River . . . . . B-2

(c) KOOTENAI RIVER DRAINAGE
(i) All waters except those listed below . . . . B-1
(A) Deep Creek drainage to the Fortine water supply intake . . . . . A-1
(B) Rainy Creek drainage to the Zonolite Company water supply intake . . . . . A-1
(C) Flower Creek drainage to the Libby water supply intake . . . . . A-1
(d) MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES
(i) Missouri River drainage to and including the Sun River drainage except tributaries listed below . . B-1
(A) East Gallatin River mainstem from Montana Highway No. 293 crossing about one-half mile north of Bozeman to Dry Creek about five miles east of Manhattan . . . . . B-2
(B) Lyman and Sourdough (Bozeman) Creek drainages to the Bozeman water supply intakes . . . . A-Closed
(C) Hyalite Creek drainage to the Bozeman water supply intake . . . . . A-1
(D) Big Hole River drainage to Butte Water Company intake above Divide . . . . . A-1
(E) Rattlesnake Creek drainage to the Dillon water supply intake . . . . . A-1
(F) Indian Creek drainage to the Sheridan water supply intake . . . . . A-1
(G) Basin Creek drainage to the Basin water supply intake . . . . . A-1
(H) McClellan Creek drainage to the East Helena water supply intake . . . . . A-1
(I) Prickly Pear Creek mainstem from the Montana Highway No. 433 crossing about one mile northwest of East Helena to Lake Helena . . . . . E-1
(J) Ten Mile Creek drainage to the Helena water supply intake . . . . . A-1
(K) Willow Creek drainage to the White Sulphur Springs water supply intake . . . . . A-Closed
(L) Muddy Creek drainage (tributary to Sun River) . . . . . E-1
(M) Sun River mainstem from Muddy Creek near Vaughn to the Missouri River . . . . . B-3
(ii) Missouri River mainstem from Sun River to Rainbow Dam . . . . . B-2
(iii) Missouri River drainage from Rainbow Dam in Great Falls to the Marias River except waters listed below . . . . . B-3
(A) Belt Creek drainage to and including Otter Creek drainage except portion of O'Brien Creek listed below . . . . . B-1
(B) O'Brien Creek drainage to the Neihart water supply intake . . . . . A-1

(C) Belt Creek mainstem from Otter Creek to the Missouri River . . . . . B-2
(D) Tributaries to Belt Creek from Otter Creek to the Missouri River . . . . . B-1
(E) Highwood and Shonkin Creek drainages . . . . B-1
(iv) Marias River drainage except the tributaries listed below . . . . . B-2
(A) Cutbank Creek drainage except waters listed below . . . . . B-1
Willow Creek mainstem from the Montana Highway No. 464 crossing about one-half mile north of Browning to Cutbank Creek . . . . . B-2
Cutbank Creek mainstem from Old Maid Miller Coulee near Cut Bank to Birch Creek . . . . . B-2
(B) Two Medicine Creek drainage to and including the Badger Creek drainage . . . . . B-1
(C) Midvale Creek drainage to the East Glacier water supply intake . . . . . A-Closed
(D) Remainder of Midvale Creek drainage . . . . B-1
(E) Summit Creek drainage to the Summit water supply intake . . . . . A-Closed
(F) Remainder of Summit Creek drainage . . . . . B-1
(G) Tributaries to Two Medicine Creek (mainstem is B-2) from Badger Creek to Cutbank Creek . . . . . B-1
(H) Dry Fork Marias River from Interstate 15 crossing near Conrad to Missouri River . . . . . B-3
(I) Teton River drainage to and including Deep Creek drainage near Choteau . . . . . B-1
(v) Missouri River drainage from Marias River to Fort Peck Dam except waters listed below . . C-3
(A) Mainstem Missouri River from Marias River to Ft. Peck Dam . . . . . B-3
(B) Eagle Creek drainage to but excluding Dog Creek drainage . . . . . B-1
(C) Judith River drainage to Big Spring Creek . . . . . B-1
(D) Big Spring Creek drainage to the Mill Ditch headgate near the southern city limits of Lewistown . . . . . B-1
(E) Big Spring Creek mainstem from the Mill Ditch headgate to the Judith River . . . . . B-2
(F) Tributaries to Big Spring Creek from the Mill Ditch headgate to the Judith River . . . . . B-1
(G) Judith River mainstem from Big Spring Creek to the Missouri River . . . . . B-2
(H) Tributaries to the Judith River from Big Spring Creek to the Missouri River . . . . . B-1
(I) Cow Creek drainage to but excluding Al's Creek drainage . . . . . B-1
(J) Musselshell River drainage to Deadman's basin diversion canal above Shawmut . . . . . B-1

(K) American Fork drainage. (Enters Musselshell River below Harlowtown) . . . . . B-1
(L) Careless and Swimming Woman Creeks above their confluence north of Ryegate . . . . . B-1
(M) Flatwillow Creek above Highway 87 south of Grassrange . . . . . B-2
(N) North Fork of Willow Creek above county road bridge in T10N, R24E, Section 7 . . . . . B-1
(vi) Missouri River mainstem from Fort Peck Dam to the Milk River . . . . . B-2
(A) Tributaries to Missouri River from Fort Peck Dam to Milk River . . . . . B-3
(vii) Milk River drainage from source or from the Glacier National Park boundary to the international boundary . . . . . B-1
(viii) Milk River drainage from the international boundary to the Missouri River except the tributaries listed below . . . . . B-3
(A) Big Sandy Creek drainage to Town of Big Sandy infiltration wells . . . . . B-1
(B) Beaver, Box Elder and Clear Creek drainages (all near Havre) . . . . . B-1
(C) People's Creek drainage to and including the South Fork of People's Creek drainage . . . . B-1
(ix) Missouri River from Milk River to North Dakota boundary except waters listed below . . . C-3
(A) Missouri River mainstem from Milk River to North Dakota boundary . . . . . B-3
(B) Wolf Creek drainage near Wolf Point . . . . B-2
(C) Antelope Creek drainage near Antelope . . . B-3
(e) YELLOWSTONE RIVER DRAINAGE
(i) Yellowstone River drainage from the Yellowstone Park boundary to the Laurel water supply intake . . . . . B-1
(ii) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake except the waters listed below . . . . . B-2
(A) Clarks Fork of Yellowstone River drainage from source to the Wyoming state line and from the Wyoming state line to and including Jack Creek drainage near Bridger . . . . . B-1
(B) Tributaries to the Clarks Fork of Yellowstone River (mainstem is B-2) from Jack Creek to the Yellowstone River except the West Fork of Rock Creek drainage listed below . . . . . B-1
West Fork of Rock Creek drainage to the Red Lodge water supply intake . . . . . A-1
(iii) Yellowstone River drainage from the Billings water supply intake to and including the Big Horn River drainage except the waters listed below . . . . . B-3

(A) Pryor Creek drainage . . . . . B-1
(B) Big Horn River drainage above but excluding Williams Creek drainage near Hardin . . . . B-1
(C) Big Horn River drainage from and including Williams Creek drainage to the Yellowstone River except the Little Big Horn River drainage listed below . . . . . B-2
Little Big Horn River drainage to and including Lodgegrass Creek drainage near Lodge Grass . . . . . B-1
Remainder of the Little Big Horn River drainage . . . . . B-2
(iv) Yellowstone River drainage from Big Horn River to the North Dakota boundary except waters listed below . . . . . C-3
(A) Mainstem Yellowstone River from Big Horn River to North Dakota boundary . . . . . B-3
(B) Tongue River mainstem from Wyoming state line to but excluding Prairie Dog Coulee drainage . . . . . B-2
(C) Tongue River mainstem from Prairie Dog Coulee to Yellowstone River . . . . . B-3
(D) Fox Creek drainage near Sidney . . . . . B-2
(f) LITTLE MISSOURI RIVER DRAINAGE
(i) All waters . . . . . C-3
(g) BELLE FOURCHE RIVER DRAINAGE
(i) All waters . . . . . C-3
(h) HUDSON BAY DRAINAGE
(i) All waters outside Glacier National Park . . B-1

4. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it, to the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana, 59601 (449-2407).

5. Mr. John Bartlett, Chairman of the Board of Health and Environmental Sciences, has been designated as the Presiding Officer.

6. The authority of the board to make the proposed rule is based on section 69-4808.2(1), R.C.M. 1947.

JOHN W. BARTLETT, Chairman

By A. C. Knight
A. C. KNIGHT, Director

Certified to the Secretary of State January 16, 1978

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

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| In the matter of the Proposed Adoption of Rules for the Reimbursement Bureau | ) ) ) | NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES |

TO: ALL INTERESTED PERSONS

1. On February 17, 1978 at 9:30 A.M. a public hearing will be held in the conference room of the central office of the Department of Institutions, 1539 11th Avenue, Helena, Montana to consider the adoption of rules for the Reimbursement Unit.

2. On October 24, 1977 in notice number 20-2-4 at pages 628 through 631, October 1977, issue no. 10, the Department published the proposed rules and makes reference to them in this Notice.

3. Nick A. Rotering, Legal Counsel for the Department, is hereby appointed the hearings officer for this hearing. Written statements may be submitted to Mr. Rotering until February 24, 1978 at our address.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State on January 13, 1978.

BEFORE THE DEPARTMENT OF LABOR AND
INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

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| IN THE MATTER OF THE AMENDMENT OF RULE 24-3.8B(6)-S8650 SPECIFYING THE PROCEDURE FOR GROUP CLASSIFICATION APPEALS | NOTICE OF PROPOSED AMENDMENT OF RULE 24-3.8B(6)-S8650 (Group Appeals Procedure for Classification Appeals) NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On or about February 27, 1978, the Board of Personnel Appeals proposes to amend Rule 24-3.8B(6)-S8650, which now provides that group appeals begin at step 4B of the formal grievance procedure.

2. The amended rule would provide that a group appeal begins at step 3 of the formal appeals procedure. Once group appeals are accepted by this Board, they will be remanded to the Personnel Division, Department of Administration, which shall have 30 working days in which to conduct an investigation in the matter and make a decision concerning the appellants' classification. The rule as amended would read as follows (new matter underlined):

24-3.8B(6)-S8650 GROUP APPEALS. (1) If the facts of a given appeal affect a large number of employees in the same manner as the appealing employee and the condition of Rule 23 of the Montana Rules of Civil Procedure is met, the board may designate the appeal a group appeal.

(2) Notice of intent to maintain a group appeal shall immediately be sent to the board. As soon as practicable after notice is sent, the board shall approve or disapprove the group appeal. Such decision may be conditional, and may be altered or amended at any time before final determination by the board after a hearing.

(3) Rule 23 shall also govern notice of members of the group, withdrawal of a member from a group, use of his own counsel by a group member, the effect of board findings on a group, maintenance of a group action in regard to particular issues or subclasses, supplementary orders controlling conduct of the action and dismissal or compromise of the appeal.

(4) In a case designated as a group appeal by the board, the appeal shall begin at step ~~four-b-(4b)~~ three of the formal appeals procedure. ~~provided-in sub-chapter-10~~.

3. The Board of Personnel Appeals proposes the change because it is now this Board's practice to remand the matter to step three in order to have Personnel Division's input in the group appeal.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than February 24, 1978.

5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before February 24, 1978.

6. If the Board receives requests for a public hearing on a proposed rule amendment from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the Board to make the proposed rule is based on section 82A-1014, R.C.M. 1947

BY Brent Cromley
BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, January 14, 1978.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION

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| In the Matter of the Amendment of the Fired Pressure Vessels Rules and Regulations. | ) ) ) | NOTICE OF PUBLIC HEARING FOR AMENDMENT AND ADOPTION OF RULES. |

TO: ALL INTERESTED PERSONS

1. On February 22, 1978, at 1:30 p.m., a public hearing will be held in the Highway Auditorium, Highway Building, 6th and Roberts, Helena, Montana, to consider the adoption of new fired pressure vessels rules.

2. The proposed new rules would completely amend the current rules concerning fired pressure vessels, which have been adopted under rule ARM 24-3.18AI(1)-S1800.

3. The division proposes to replace the current rules concerning fired pressure vessels in order to update the rules on this subject. The rule changes will include matters concerning the inspection, repairing, safety valve control, operation, attendance, and other matters related to the safe operation of fired pressure vessels. A copy of the proposed rules may be obtained by contacting Mrs. Norma Brodersen, Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601.

4. Interested persons may present their data, views and arguments, whether orally or in writing, at the hearing.

5. Norman H. Grosfield, Administrator of the Division of Workers' Compensation, will preside over and conduct the hearing.

6. The authority of the Division of Workers' Compensation to make the proposed rule changes is based on Sections 69-1501 and 41-1727, R.C.M. 1947.

7. Rationale: The reason the Division is proposing to completely redo the rules concerning fired pressure vessels is that changes in technology have taken place which should be addressed through new rules, and it is believed a more modern and clearly understood set of rules is required for the safe operation of fired pressure vessels in this state.

Dated this 16th day of January 1978.

DIVISION OF WORKERS' COMPENSATION

By Norman H. Grosfield
Norman H. Grosfield, Administrator

Certified to the Secretary of State January 16, 1978.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of a rule of practice concerning Board oversight of agency decisions made in the interim between Board meetings.

NOTICE OF PROPOSED ADOPTION OF RULE OF PRACTICE

(Board Oversight Of Agency Decisions)

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after March 15, 1978, the Board of Livestock proposes to adopt a rule of practice describing procedures by which the Board will oversee and correct agency actions, especially those made in the interim periods between Board meetings.

2. The proposed rule provides as follows:

"BOARD OVERSIGHT OF AGENCY ACTIONS: (1) When a private citizen feels a decision of an agent of the Department of Livestock is unfair and if carried to completion will result in unnecessary inconvenience or harm to him, he may seek the reversal of the decision by requesting the Board of Livestock in writing to stop the implementation of the decision, or to otherwise modify its impact. Upon receipt of the petition, the matter shall be placed upon the agenda of the next regular meeting of the Board.

(2) If the action complained of must be halted immediately in order to prevent irreparable harm, the person seeking relief must so state in his letter. In the event the Board is not in session at the time the letter is received, the administrator of the division at which the complaint is directed shall immediately contact the Chairman of the Board, or in his absence the Vice Chairman, who shall appoint a member of the Board to investigate and act upon the matter as follows:

(a) He shall meet as soon as possible with the person seeking relief and the division administrator at a time and place convenient to the parties involved. At the Board member's option the meeting may be by conference telephone call.

(b) To the extent that the action taken is discretionary and not required by law, the Board member may, if satisfied the action is unfair and will cause unnecessary inconvenience or harm, suspend implementation of the action until the next regular meeting of the Board, at which time the full Board shall consider the matter. In the event the administrator wishes to challenge the decision at the next regular Board meeting, he shall immediately notify the person seeking relief so he may be present if he desires.

(c) When an administrator whose decision has been

reversed by the Board member feels the reversal will result in an immediate and serious peril to the public health, welfare or safety he may request an immediate meeting of the Board to consider the action. The person seeking relief may also request a meeting with the Board if he is dissatisfied with the Board member's decision. Such a meeting may be conducted by conference telephone call, provided the person seeking relief is given the opportunity to participate."

3. The rule is proposed to clearly set forth a method for members of the livestock industry to seek relief from unwarranted or unnecessary actions taken by the Department, in a manner which minimizes bureaucratic red tape.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, or Les Graham, Administrator, Brands-Enforcement Division, Department of Livestock, Captiol Station, Helena, MT. 59601. Written comments must be received by March 10, 1978.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Dr. Glosser or Les Graham on or before March 10, 1978.

6. If the department receives requests for a public hearing from more than twenty five persons directly affected a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the department to make the proposed rules is based on section 82-4203, R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State March 16, 1978.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rule 32-2.6A(26)-S6025 relating to brucellosis testing.

NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.6A(26)-S6025

(Brucellosis Testing)

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after March 15, 1978, the Board of Livestock proposes to amend ARM rule 32-2.6A(26)-S6025 by altering the change of ownership and change of pasture test provisions from requiring a test on cattle capable of breeding over two years of age to requiring the test on such animals in which the first pair of permanent incisor teeth have erupted.

2. The rule as proposed to be amended provides as follows:

(1) and (2) remain the same.

(3) Any cattle, bison or elk under domestication, capable of breeding in which ~~are twenty four (24) months of age and over~~ the eruption of the first pair of permanent teeth has occurred and female swine and boars ~~six (6)~~ months of age and over not consigned for immediate slaughter or to an out-of-state destination which change ownership, shall

(a) through and including (f) remain the same.

(4) (a) Cattle capable of breeding ~~two years of age and over~~ in which the eruption of the first pair of permanent incisor teeth has occurred, owned or managed by an investment service or an out-of-state corporation the majority of whose shareholders are not primarily engaged in the production of livestock, which are moved from one premise to another non-contiguous premise shall be found negative to an official test for brucellosis made not more than ~~thirty~~ (30) days prior to such a movement. The owner or manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interests of animal disease control will not be harmed, the waiver may be granted.

(4) (b) remains the same.

3. The purpose of this amendment is to make possible an accurate determination of when cattle should be tested at a change of ownership or change of pasture. Since cattle don't have birth certificates and there are considerable variations in size and weight depending on breed and nutrition, the present standard of testing animals that are two years of age and over is difficult to accurately utilize, especially in the spring of the year.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to

James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, MT. 59601. Written comments must be received by March 10, 1978.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Dr. Glosser on or before March 10, 1978.

6. If the department receives requests for a public hearing from more than twenty five persons directly affected a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the department to amend this rule is based on section 46-208, R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State January 16, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ABSTRACTORS

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| IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions. | NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions.<br><br>No Hearing Contemplated. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978, the Board of Abstractors proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Abstractors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than February 22, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Abstractors, LaLonde Building, Helena, Montana, on or before February 22, 1978.

5. If the Board of Abstractors receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-two (22) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

6. The authority of the Board of Abstractors to make the proposed adoption of a new rule is based on Section 82-4228, R.C.M. 1947.

DATED THIS 4th day of [illegible], 1978.

BOARD OF ABSTRACTORS
J. L. CADY
CHAIRMAN

BY: [illegible]
ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 1-11, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF DENTISTS

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| IN THE MATTER of the Proposed) Amendment of ARM 40-3.34(10)-) S3470 Set and Approve Re- ) quirements and Standards. ) | NOTICE OF PROPOSED Amendment of ARM 40-3.34(10)-S3470. No Hearing Contemplated. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978 the Board of Dentists proposes to amend ARM 40-3.34(10)-S3470 Set and Approve Requirements and Standards.

2. This notice results in part from the Board's receipt of a petition from Robert W. Bowman, D.D.S. et al asking the Board to make certain amendments to its rules. As required by law, the Board's order responding to that petition announced that the Board would propose certain changes as petitioned for, and this notice initiates that proceeding. In addition thereto the Board, in the interest of updating the rules, upon its motion proposes certain other changes herein which were not specifically petitioned for.

3. The amendment as proposed will make the following changes to the existing rule; (where applicable, new matter underlined and deleted matter interlined)

A. The Board will delete the existing catch phrase for the rule as it is totally lacking in descriptive quality, and in lieu thereof will substitute, "ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES".

B. The Board will amend existing subsection (1) in its entirety and substitute the following language:

"(1) Section 66-921 R.C.M. 1947 requires and authorizes the Board of Dentists to define by rule what shall constitute allowable functions in the practice of dental hygiene.

Likewise Section 66-923.1 so authorizes the Board regarding allowable functions in the practice of the dental assistant. The following subsections delineate those functions which the Board will permit for the hygienist and for the assistant.

Where section 66-921 and section 66-923.1 require that the hygienist and the assistant may perform their allowable functions only under the direct personal supervision of the licensed dentist, the Board interprets such supervision to mean that the dentist supervisor must be physically present and engaged in his active practice in the office spaces where and when the auxiliaries are performing these duties. This interpretation of supervision shall not apply where a hygienist is performing allowable functions in a recognized hospital, institution, or nursing home

with medical or para-medical personnel available on premises, if such functions have been evaluated and prescribed by a licensed dentist. All prescriptions will become a permanent part of the patient's record."

The reason for this proposed change is to clarify the purpose of the rule and to clarify the board's intent in defining supervision. The Board feels that the immediate availibility of medical assistance is the reason for requiring the physical presence of the dentist. This need appears to be satisfied in an institution setting where such medical assistance is always available.

C. Subsections (2) through (6) are proposed to be amended in their entirety and replaced with the following provisions:

"(2) Allowable functions for the dental hygienist shall include all reversible dental procedures in which the hygienist was instructed and qualified to perform in an accredited school of dental hygiene, except placing and carving restorations.

The hygienist will not be allowed to perform any non-reversible dental procedures except;

(a) making radiograph exposures,
(b) root planing and soft tissue curretage.

(3) Allowable functions permitted for dental assistants without expanded duty training shall be as follows;

(a) taking impressions for study casts,
(b) removing sutures and dressings,
(c) applying topical anesthetic agents,
(d) providing oral health instructions,
(e) applying topical floride agents,
(f) removing excess cement from coronal surfaces of teeth.

(4) Allowable expanded duty functions for assistants, after 6 months clinical experience as a dental assistant and after becoming qualified by successfully completing an educational course approved by the Montana Dental Association and the Board of Dentists are as follows;

(a) making radiograph exposures,
(b) placing and removing rubber dams,
(c) placing and removing matrices,
(d) collecting patient data.

The following functions will not be allowed to the dental assistant;

(5)(a) administering local anesthetic agents,
(b) placing and removing temporary restorations,
(c) placing and carving and finishing restorations.

The principal reasons for the changes proposed under C. above are to restructure the method of describing allowable functions. The Board feels that describing functions for the

hygienist in terms of reversible and non-reversible services, with exceptions, more properly circumscribes the scope of permissible functions. The Board, however, considers that allowable functions for assistants may be delineated and thus does not propose change of the method of description. The Board further has proposed deleting the polishing of coronal surfaces of teeth as a currently permitted function for assistants for the reason that they are not convinced that the assistants are qualified and competent to do so and have further found that such permitted function has lead to serious abuse wherein such function has been extended into general prophylaxis. The Board feels that this deletion will eliminate any opportunity for abuse.

D. Existing subsections (7), (8), and (9) are not proposed for change. Subsection (10) is proposed to be amended as follows:

"(10) ~~The Registered Dental Hygienist function,~~ Prophylaxis, ~~which~~ is defined as the removal of accumulated matter deposits, accretions or stains from the natural and restored surfaces of exposed teeth which may include root planing and soft tissue curretage if ordered by the dentist. ~~is not an expanded duty function as contained in these rules and may be performed only by Registered Dental Hygienists under the direct personal supervision of a dentist holding a current Montana license.~~"

The proposed change leaves the definition of prophylaxis but eliminates the statement that it is not an expanded duty function. This is eliminated as unnecessary language in that the allowable functions as above proposed already indicates that an assistant cannot perform prophylaxis. The definition is left in to make it clear what prophylaxis includes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Dentists, Lalonde Building, Helena, Montana. Written comments in order to be considered must be received no later than February 22, 1978.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Dentists, Lalonde Building, Helena, Montana, on or before February 22, 1978.

6. If the Board of Dentists receives requests for a public hearing on the proposed amendment from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Montana Administrative Register.

7. The authority of the Board of Dentists to make the proposed amendment is based on Sections 66-921 and 66-923.1

R.C.M. 1947.
DATED THIS 16th DAY OF January 1978.

BOARD OF DENTISTS
JOHN K. MADSEN, D.D.S.,
PRESIDENT

BY: Ed Carney
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 1-16, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

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| IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions. | NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions. |
| | NO HEARING CONTEMPLATED. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978, the Board of Horse Racing proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Horse Racing, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than February 22, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Horse Racing, LaLonde Building, Helena, Montana, on or before February 22, 1978.

5. If the Board of Horse Racing receives requests for a public hearing on the proposed adoption of a new rule from more than twenty- five(25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

6. The authority of the Board of Horse Racing to make the proposed adoption of a new rule is based on Section 82-4228, R.C.M. 1947.

DATED THIS 11th day of December, 1978.

BOARD OF HORSE RACING
RICHARD FORESTER
CHAIRMAN

BY: _____
ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 12-14, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

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| IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions. | NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions.<br><br>NO HEARING CONTEMPLATED. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978, the Board of Medical Examiners proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, LaLonde Building, Helena, Montana. Written Comments in order to be considered must be received no later than February 22, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Medical Examiners, LaLonde Building, Helena, Montana, on or before February 22, 1978.

5. If the Board of Medical Examiners receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-five(25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

6. The authority of the Board of Medical Examiners to make the proposed adoption of a new rule is based on Section 82-4228, R.C.M. 1947.

DATED THIS 16th day of January, 1978.

BOARD OF MEDICAL EXAMINERS
LLOYD GARRELS
CHAIRMAN

BY: _____
ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 1-11, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING

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| IN THE MATTER of the Proposed) Adoption of a Rule Implement-) ing Section 66-1228 R.C.M., ) 1947. ) | NOTICE OF PROPOSED Adoption. No Hearing Contemplated. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978 the Board of Nursing proposes to adopt a rule implementing Section 66-1228 R.C.M. 1947.

2. The rule as proposed will read as follows:

"Under Section 66-1228 R.C.M. 1947, where a applicant for licensure without examination seeks permission to be employed by a health care agency pending licensure, subsection (3) thereunder requires a statement of intention to practice consisting of an affidavit containing information prescribed by the board. That section further requires an affidavit from the intended employer.

The affidavit of the registered nurse shall contain a statement that the registered nurse is currently lawfully entitled to practice nursing in a named state and record the number of the license held in said state.

The affidavit of the health care agency in which the nurse is seeking employment shall have a statement to the effect that the official of the health care agency has verified the licensure, current registration and current entitlement of such nurse to practice nursing in the mentioned state of the United States or province of Canada.

The same affidavit requirements are applicable to the application for a licensed practical nurse."

The reason for this proposed rule is to require verification from the applicant of licensure in another state, which is a requirement imposed by Section 66-1228 (2) R.C.M. 1947.

3. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Nursing, Lalonde Building, Helena, Montana. Written comments in order to be considered must be received no later than February 22, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Nursing, Lalonde Building, Helena, Montana, on or

before February 22, 1978.

5. If the Board of Nursing receives requests for a public hearing from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Montana Administrative Register.

6. The authority of the Board of Nursing to make the proposed adoption is based on Section 66-1225 R.C.M. 1947.

DATED THIS 16th DAY OF January, 1978.

BOARD OF NURSING
JANIE CROMWELL
PRESIDENT

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 1-16, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHARMACISTS

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| IN THE MATTER of the Proposed Amendment of ARM 40-3.78(6)-S78020 Set and Approve Requirements and Standards - Labeling and ARM 40-3.78(6)-S78030 Statutory Rules and Regulations - Dangerous Drugs.) | NOTICE OF PROPOSED Amendment of ARM 40-3.78(6)-S78020 Set and Approve Requirements - Labeling and ARM 40-3.78(6)-S78030 Statutory Rules and Regulations - Dangerous Drugs.<br><br>No Hearing Contemplated. |

TO: ALL INTERESTED PERSONS

1. On February 24, 1978, the Board of Pharmacists proposes to amend ARM 40-3.78(6)-S78020 Set and Approve Requirements and Standards - Labeling and ARM 40-3.78(6)-S78030 Statutory Rules and Regulations - Dangerous Drugs.

2. The amendment of ARM 40-3.78(6)-S78020 Set and Approve Requirements and Standards - Labeling as proposed will read as follows:(new matter underlined, deleted matter interlined)

"(1) On prescription drugs, the label shall contain the name and strength of the drug, unless the prescriber otherwise specifies.

(2) ~~In the interest of public health and safety~~ The presciption label must be securely attached to the container in which the prescription is dispensed."

The reason for the proposed new language is to re-establish the labeling requirement which was inadvertently eliminated when the Legislature in the 1977 session amended Section 66-1523 R.C.M. 1947 regarding substitution.

3. The amendment of ARM 40-3.78(6)-S78030 Statutory Rules and Regulations - Dangerous Drugs as proposed will add the following drugs to the existing schedules of controlled substances.

Schedule IV - Prazepam and Dextropropoxyphene
Schedule V - Loperamide

The reason for the proposed additions is that such drugs have been controlled by the Federal Government since the last changes made to the board rules and pursuant to its instructions in Section 54-302 R.C.M. 1947, the Board likewise is controlling them by publication of this notice.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacists, Lalonde Building, Helena, Montana. Written comments in order to be considered must be received no later than February 22, 1978.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit

this request along with any written comments he has to the Board of Pharmacists, Lalonde Building, Helena, Montana, on or before February 22, 1978.

6. If the Board of Pharmacists receives requests for a public hearing from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Montana Administrative Register.

7. The authority of the Board of Pharmacists to make the proposed amendments is based on Section 66-1504 R.C.M. 1947.

DATED THIS 16th DAY OF January, 1978.

BOARD OF PHARMACISTS
TERRY J. DONAHUE
PRESIDENT

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 1-16, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 42-2.12(6)-S1500 realting to combined populations of municipalities. ) NOTICE OF PROPOSED REPEAL OF ) RULE 42-2.12(6)-S1500 RELATING TO THE REGULATION CONCERNING COMBINED POPULATIONS OF MUNICIPALITIES.

TO: All Interested Persons:

1. On February 24, 1978, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the repeal of the rule relating to the Combined Populations of Municipalities.

2. The rule to be repealed is on page 528 and 529 of the Administrative Rules of Montana.

3. The department is repealing this rule because the Administrative Code Committee by letter dated October 17, 1977, has recommended that the rule not be adopted for the reason that the transfer provisions do not accord with the restrictions on transfers found in Section 4-4-206(4)(a). The remainder of the rule omits pertinent portions of Sections 4-4-201(1)(b) and 4-4-202(2) and either should be redrafted to include those portions and to delineate statutory language or not be adopted. See 82-4204(5). In addition, it has been recommended that the new subsection added on November 26, 1977, be deleted as not being in conformance with the statutory language found in Section 4-4-202, R.C.M. 1947.

~~(4) --In the event an aggregation of the populations of adjacent cities results in fewer licenses for the entire populated area than would be available if the municipalities were treated separately, the department shall consider the municipalities as separate for the purpose of determining the quota for each municipality. --Aggregation, as described in the preceding subsections, shall occur only when the quota for the combined area is larger than the quota for each municipality within the entire populated area.~~

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than February 16, 1978.

5. Mr. Laury Lewis has been designated to preside over

and conduct the hearing.

6. The authority of the department to make the proposed rule is based on Section 4-1-303, R.C.M. 1947.

RAYMON E. DORE
Director,
Department of Revenue

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

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| In the matter of the amendment of Rule 46-2.10(14)-S11350 pertaining to securing support from absent fathers in behalf of children. | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ON PROCEDURE FOR SECURING SUPPORT FROM ABSENT FATHERS IN BEHALF OF CHILDREN. |

TO: All Interested Persons

1. On February 16, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule MAR 46-2.10(14)-S11350.

2. The proposed amendment to rule 46-2.10(14)-S11350(1)(c) found in the Administrative Rules of Montana would allow for waiver of cooperation in establishing paternity and obtaining child support upon showing of good cause.

3. The rule as proposed to be amended provides as follows:

(c) Applicants and recipients must cooperate in establishing paternity and obtaining child support. This requirement may be waived upon a showing of good cause for failure or refusal to cooperate.

(i) Good cause exists in the following circumstances:

(a) Cooperation would not be in the best interest of the child because of the likelihood of the cooperation resulting in substantial danger, physical harm, undue harassment or severe mental anguish to the child or caretaker relative.

(b) The child was conceived as a result of forcible rape or an incestuous relationship.

(c) The applicant or recipient is planning to relinquish or has relinquished the child to a public or licensed social agency for the purpose of adoption.

(d) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(e) The applicant or recipient's legal rights to the child have been terminated by a court of competent jurisdiction.

(f) Cooperation would be detrimental to the best interests of the child for any other reason.

(ii) An applicant or recipient who claims to have good cause for refusing to cooperate will be required to (1) provide supporting evidence or (2) provide sufficient information to permit an investigation to determine the

existence of one or more of the circumstances specified in paragraph (i).

(iii) There shall be no denial, delay or discontinuance of assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of paragraph (ii). However, the Department may recover amounts paid pending determination if no good cause is found and the applicant continues to refuse to cooperate.

(iv) In cases where good cause has been found there will be a periodic review, in no case less frequently than at each redetermination of eligibility, to determine if circumstances have changed and good cause no longer exists.

(v) The county welfare department will promptly notify the Child Support Bureau, Department of Revenue, of all cases in which it has been determined that there is good cause for refusal to cooperate in establishing paternity and obtaining child support.

4. The rationale for the proposed amendment is to bring the cooperation rule into conformity with the Social Security Act; in particular 42 U.S.C. Section 602(a)(26). On August 10, 1977, the Montana Board of Social and Rehabilitation Appeals decided that the cooperation requirement could not be enforced until rules permitting noncooperation upon good cause had been promulgated. It is the intent of these rules to provide standards for noncooperation in situations where cooperation would interfere with the best interests of the child.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may be submitted to Walter Perry, P.O. Box 4210, Helena, Montana, 59601, any time before February 22, 1978.

6. Walter Perry, P.O. Box 4210, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 71-503 R.C.M. 1947. The implementing authority is based upon section 71-503, R.C.M. 1947 and 42 U.S.C., Section 602(a)(26).

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 16, 1978.

MAR Notice No. 46-2-138

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

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| In the matter of the adoption of rule ARM 2-2.11(1)-S11040 concerning the incorporation by reference of the Model Code for Energy Conservation in New Building Construction | NOTICE OF THE ADOPTION OF THE STATE ENERGY CODE, Substantive Rule ARM 2-2.11(1)-S11040 |

TO: All Interested Persons:

1. On October 24, 1977, the Department of Administration published notice of proposed adoption of new rules concerning the adoption by reference of the Model Code for Energy Conservation in New Building Construction. This national code resulted from an agreement between the National Conference of States on Building Codes and Standards, Inc. and the U.S. Energy Research and Development Administration. The ERDA funding regulations provided that NCSBCS contract with the three model code groups, Building Officials and Code Administrators International, Inc., International Conference of Building Officials, and Southern Building Code Congress International Inc., to work in a joint effort and incorporate ongoing energy conservation code development efforts into this Model Code. Notice of the proposed code adoption was published on pages 608-609, of the Montana Administrative Register, issue number 10.

2. A formal hearing was held on December 5, 1977, and following receipt of comments by various interested persons, the Department has adopted the proposed Model Code with the following change:

Section 103.0 Plans and Specifications. With each application for a building permit, and when required by the Building Official, plans and specifications shall be submitted. The Building Official may require plans and specifications be prepared by an engineer or architect licensed to practice by the State, except for owner-occupied, single-family dwelling houses. All designs submitted under the provisions of Section 4 shall be prepared by an engineer or architect licensed to practice by the State.

3. This code is being adopted by the Department of Administration in order to comply with the legislative mandate of Chapter 173, Montana Session Laws, 1977, requiring the adoption of a nationally recognized energy conservation code for the State of Montana.

4. Numerous objections were received from persons attending the hearing, including staff from the Administrative Code Committee, that individual homeowners should not be required to

submit plans and specifications prepared by licensed architects or engineers when performing construction on their own dwellings. In order to satisfy these objections, the amendment to Section 103.0 as stated above will be adopted by the Department with the exception of plans and specifications submitted under Section 4 of the Model Code which must be prepared by a licensed architect or engineer. Section 4 design criteria are so innovative and technically complex that only professional architects and engineers possess the expertise to prepare plans and specifications submitted under this section.

Representatives of CON'EER Engineering, Inc. and Drake, Gustafson and Associates, filed written comments containing the following objections:

(a) Stated that plans and specifications review under Section 103 created a double standard review whereby design professionals would be subject to greater scrutiny than homeowners or contractors. This "double standard" objection is irrelevant because nowhere in the code are professional designers to receive more severe review than contractors. This objective is of an administrative nature and should be voiced to the building official during the plan review process.

(b) Suggested standard forms be provided for calculations required under Section 103.1. Forms for mathematical calculations are not intended to be part of the code at this time. However, forms may be devised by the Building Codes Division for future use depending on the quality of plan submissions during the initial enforcement period.

(c) Suggested adding the definition of Energy Utilization Index to Section 2 of the code. This suggestion is overruled because the code does not utilize the Energy Utilization Index concept, e.g., BTU's/sq. ft./year.

(d) Objected to the outdoor temperature design standards of Section 302.0 to be selected from the columns of 97½% values for winter season taken from the tables in Standard RS-1. Specifically, this would create under heated buildings leading to complaints from occupants to the architects, engineers, and contractors. Also, suggested an exemption for hospitals, nursing homes and other institutions housing infirm patients. This objection is deemed without merit because the 97½% winter values used in the code applies only to the building envelope and not to the size or capacity of the mechanical equipment. Therefore, adequate equipment can be specified to keep all buildings, including hospitals and nursing homes, sufficiently warm. In addition, Section 302.0 allows adjustments to be made by the building official to reflect local climates or weather experience.

(e) Objected to the cost of the hot water conservation requirements for lavatories in restrooms of public facilities provided in Section 503.2.4 of the code, which limits the amount and temperature of hot water available from outlets. This objection is overruled because it is the belief of the

Building Code Division that adequate mechanical devices are available or will become available in the near future at a reasonable cost. Also, any additional cost of conservation equipment will be more than compensated in the long run by reduced energy consumption.

(f) Objected to the service voltage computation requirements of Section 504.1.2 which obligates the builder to choose service voltage producing the least energy loss. The objection was based on a hypothetical example wherein the same voltage equipment producing the least energy loss was more costly to purchase and install than a less expensive service voltage equipment producing greater energy loss. The objection is without merit because it is purely hypothetical and no factual foundation proves that such a result is likely to occur. Moreover, the code does not address cost as an end result, but rather the conservation of diminishing natural resources. Higher production costs, if any, should also be adequately amortized over the life of the structure by reduced energy consumption.

(g) Objected to the calculations required by Section 504.2.0 concerning task lighting, general lighting, and non-critical lighting because buildings with moveable portions and unknown task locations change from time to time thus creating conflict with existing lighting calculations. This objection is without merit because designers will simply have to be more precise with interior design and utilize portable, rather than fixed, task lighting equipment.

(h) Objected to the Sheet Metal and Air Conditioning Contractors National Association, Inc. standards adopted by Section 7 of the code on the grounds that the standards are outdated and have been replaced by newer issues. This objection is overruled because it is in the best interests of the State and the construction industry to be consistent with other geographical areas of the United States using the code as a model. If the code adopts the revised SMACCNA Standards, then Montana will also adopt them for use in the code.

The following adverse comments were received from representatives of the Montana Energy and MHD Research and Development Institute, Inc.:

(a) Objected to the code because it failed to address heat loss calculations for below grade structures such as basements. Specifically, that temperature differential between outside design temperatures and basement temperatures, would be erroneously calculated. This objection is overruled because the code calculations are not heat loss calculations. The code does not attempt to determine actual heat loss per construction project, but rather sets a standard to be met by all new building construction.

(b) Objected that the total heat loss (Q) calculations under the code have been incorrectly interpreted by the Model Code workshop to mean:

$Q = \mu \cdot A$ total code $\geq \mu \cdot A$ total calculated

whereas it should be $Q = \mu A(T_o - T_i)$ Total Code $> \mu A(T_o - T_i)$ Total calculated

This objection is irrelevant to the code because code calculations are not actual heat loss calculations (see (a) above). Also, the code requires only that the combined thermal transmittance value (Uo) not exceed listed values.

(c) Objected that the code does not specify average percent of framing. Suggested that guidelines be provided as to whether the header is considered a floor or wall framing in the code as the code only sets the U value for the walls. This objection is without merit because it is the designer's responsibility to achieve the code value with any combination of wall, floor, or header design.

(d) Suggested that a provision be incorporated in the code for revision as more experimental information becomes available. This is unnecessary because the amendment provisions of the Montana Administrative Procedure Act allows revision as new information and concepts become available.

(e) Objected that the code failed to incorporate effective U values, i.e., resistance to heat transmission for adobe, masonry or log houses. This objection is meaningless at this time because no effective standards for such construction techniques have been established. Montana will probably adopt such standards in the future if and when they become available.

(f) Objected that the code is "extremely minimum and not necessarily economically nor energetically optimum." Suggested an introduction similar to the New Mexico Energy Conservation Code incorporating energy conservation suggestions. This objection is overruled because the Montana legislature mandated a code setting minimum standards for energy conservation not a suggestion box approach. However, any suggestions can be addressed to the Building Codes Division.

(g) Objected to Section 101.2(b) of the code stating that a provision should be added excluding line shacks and animal shelters. The objection is overruled because buildings using less than one (1) watt per square foot are exempt. This would include most line shacks and animal shelters.

(h) Objected to the approvals required under Section 105.0 because they might "realistically be too restrictive." This objection is without merit because code approvals as required are no more or less restrictive than the other portions of the Uniform Building Code which has been in effect in Montana for many years.

(i) Objected to the allowance of credit for energy from traditional fireplaces because such fireplaces usually lose energy rather than retain energy. This objection is without merit because fireplace efficiencies cover such a broad range that they cannot be categorized and excluded. Moreover, such varying factors as types of wood and moisture content mater-

ially affect fireplace performance.

(j) Suggested that the term "Fenestration" be defined under the Shading Coefficient Definition. This is unnecessary because the term "Fenestration" is not used as a technical word of art in the code but is to be given only its plain, ordinary meaning.

(k) Suggested that latitude be added to the table for cooling calculations under Section 302.0(a). This objection is without merit because latitude was added to the code by the model code group in the latest revision which is being adopted by Montana.

(l) Objected to the editorial arrangement of the code and suggested that Section 4, Building Design by Systems Analysis and Design of Buildings Utilizing Non-Depletable Energy Sources, follow Section 5, Building Design by Component Performance Approach. This objection is overruled because editorial arrangement is irrelevant to the operation and enforcement of the code.

(m) Objected that the trade-off analysis under Section 502.2(a) should include a reasonable temperature for heat transfer through floors and not the outside air temperature. This objection is without merit for the same reasons stated in (a) above.

(n) Objected to the "exemption" contained in Section 502.3, Exception 2-Roofs, and suggested it be eliminated. The Department is unable to respond because Section 502.3 of the code contains no exemptions. All Section 502.3(b)(2) requires is that any building mechanically cooled must have a combined thermal transmittance value for the roof/ceiling not exceeding that specified in Table 5-2.

(o) Suggested that steady state U value from New Mexico Energy Conservation Code be added to Section 601.1. Overruled for the same reasons as stated in (e) above.

(p) Suggested that the glass percent table be expanded to include 0-10%. This modification is being considered by the model code drafters, and, if adopted, will be amended into the Montana code.

(q) Objected that wall assemblies for framing should not include R values for the full thickness of wood beam depth if the insulation is not of the same thickness. The objection is overruled because the code follows the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., procedures which are admittedly a simplification of actual conditions. However, the results which are easily calculated are a good approximation of the real U value. In addition, an exact analysis is beyond the capability of all but a few people, and the code must be utilized by many non-energy oriented designers and contractors.

The following comments were received by the hearing examiner from a representative of American Building Company:

(a) Objected to the exemption for buildings under 5000

sq. ft. contained in Section 402.2 and stated that the exemption should be increased to 10,000 sq. ft. up to three stories. No reasons for the increase were stated. This objection is overruled because the cutoff point should be left to the expertise of those developing the code, thus keeping Montana in phase with the rest of the nation.

(b) Objected to the requirement that all designs submitted under Section 4 must be prepared by a licensed architect or engineer. This objection is overruled because Section 4 designs are so technically complex that only professional architects and engineers possess the requisite expertise for plans submitted under this section.

(c) Objected that the construction industry was generally unprepared for the code at this time, and suggested passing only those portions of the code that are completely clear and tested. While this objection may be an accurate statement, it is overruled on the grounds that the building industry will have to make an extra effort to comply and adjust to the code as quickly as possible. Since the entire code is untested with respect to actual performance as a building code rather than a model, it is impossible to select portions of the code that have been tested elsewhere. Also, Montana is one of the first states to adopt the Model Code as an energy conservation code and therefore, much of the initial testing process will be accomplished here.

Representatives of the Montana Energy Office made the following comments at the public hearing held December 5, 1977:

(a) Objected to the code on the grounds that it will hamper the use of passive solar design which could be prevented by including a section on effective U values. Effective U values are highly technical and theoretical at this time with little firm analytical data in existence supporting their use. The use of effective U values is presently being studied by the Model Code group for incorporation into the code. Montana will probably adopt effective U values as they become incorporated into the code. In addition, the comment that the code hampers solar use is unfounded because the code only addresses the building envelope and not heating system design which includes solar heating systems.

(b) Objected that Section 4 of the code too narrowly restricts the definition of passive design and fails to consider low technology approaches such as wall color, window orientation, etc. Also objected that documentation required would be excessive for small contractors and private home builders. These objections are overruled because it is the intent of Section 4 of the code to utilize extremely high technology for innovative design ideas. It is not expected that many private homebuilders will submit plans under this section. Passive design for small contractors and homeowners is contemplated in Section 6 of the Code--Building Design by Acceptable Practice--which also contains easy-to-read assembly diagrams (Table 6-1A)

for use by the small contractor or private builder. In addition, documentation required under Section 4 is intended to be restrictive because of the innovative designs contemplated which may affect public health. For example, heating designs by means of sewage recovery must be stringently inspected during plan review and construction to avoid health hazards from poisonous gases. The code attempts to meet both low and high technology demands for all segments of the construction industry.

(c) Objected that Section 5 of the code reflected a concern with peak energy use rather than average energy use. Specifically objected that this would encourage use of "excessive insulation" while unduly restricting the amount of glass permitted. These objections are without merit because no standard exists by which to determine when insulation becomes excessive. Second, Montana's climate generally requires energy cutbacks during peak periods of use and thus, it is clearly intended by Section 5 to reduce peak periods of use rather than average energy use. Furthermore, any conservation measure designed to reduce peak energy use will logically reduce average use as well.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State January 12, 1978.

DEPARTMENT OF FISH AND GAME

Amendment of Rule 12-2.18(1)-S1810 REGULATIONS FOR CONSTRUCTION AND MAINTENANCE OF FISH LADDERS

1. The Department of Fish and Game published Notice No. 12-2-49 of a proposed amendment to ARM 12-2.18(1)-S1810 regarding construction and maintenance of fish ladders on November 25, 1977, at page 846, Montana Administrative Register; 1977 issue Number 11.

2. The Department has amended this rule to delete hearing procedures which were adopted prior to enactment of the Montana Administrative Procedures Act and the Attorney General's Model Procedural Rules. Amendment of this rule will promote a uniform hearing procedure within the Department.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment as proposed with no change in the text as it appears in the published notice.

Amendment of Rule 12-2.6(1)-S630 ROADSIDE ZOO REGULATIONS

1. The Department of Fish and Game published Notice No. 12-2-48 of a proposed amendment to ARM 12-2.6(1)-S630 regarding roadside zoos on November 25, 1977, at page 844, Montana Administrative Register; 1977 issue Number 11.

2. The Department has amended this rule to clarify contradictions and ambiguities within Section 26-1209, R.C.M. 1947, pertaining to the disposition of wildlife stock possessed under a roadside zoo or menagerie permit.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment as proposed with no change in the text as it appears in the published notice.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

Adoption of Amendment to rule 24-3.8(14)-S8090 (1) (c) DECERTIFICATION BY SCHOOL EMPLOYEES.

1. The Board of Personnel Appeals published notice No. 24-3-8-25, noticing a proposed amendment of Rule 24-3.8(14)-S8090 (1) (c) concerning petition for decertification filed by school employees on October 24, 1977, at page 634, Montana administrative Register, 1977 issue Number 10.

2. The Board of Personnel Appeals has adopted the proposed amendment to show that the traditional contract bar rule applies to school employee decertifications as it does with all decertifications conducted by this Board.

No testimony or comments were received.

3. The amendment to the rule has been adopted with the language changes as shown below:

(1) (c) A petition seeking decertification of a bargaining unit comprised of school employees may only be filed ~~not more than ninety (90) days before April 1~~ JANUARY of the year the ~~current~~ EXISTING collective bargaining agreement is scheduled to terminate or ~~upon~~ AFTER the ~~terminal~~ TERMINATION ~~date~~ of the ~~current~~ EXISTING collective bargaining agreement.

The language was changed to make the meaning and intent of the amendment and rule clearer.

Adoption of Amendment to rule 24-3.8B(6)-S8710 FORMAL APPEALS PROCEDURE.

1. The Board of Personnel Appeals published Notice No. 24-3-8-26, noticing a proposed amendment to rule 24-3.8 B(6)-S8710 on the formal classification grievance procedure October 24, 1977, at page 637, Montana Administrative Register, 1977, issue Number 10.

2. The board of Personnel Appeals has adopted the proposed amendment to make an investigation in a classification appeal discretionary with the board. This amendment recognizes the fact that investigations have ceased to be useful in most cases, and are almost without exception appealed from.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective on the date of publication.

Adoption of Rules 24.8.000 ORGANIZATION OF BOARD OF PERSONNEL APPEALS, 24.8.001 BOARD MEETINGS, QUORUM, 24.8.100 ADOPTION OF ATTORNEY GENERAL MODEL RULES, 24.8.200 BOARD ADDRESS, 24.8.201 SERVICE OF PROCESS, 24.8.202 INTERVENTION, 24.8.203 AMENDING PETITIONS, 24.8.204 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING,

24.8.205 MOTIONS, 24.8.206 HEARINGS, 24.8.207 EXTENSION OR WAIVER OF TIME LIMITS, 24.8.208 SEVERABILITY, 24.8.209 SUSPENSION, 24.8.300 PURPOSE, 24.8.301 DEFINITIONS, 24.8.302 GRIEVANCE PROCEDURE, and 24.8.303 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION.

1. The Board of Personnel Appeals published Notice 24-3-8-27 of proposed new rules for Department of Fish and Game grievances on October 24, 1977, at page 640, Montana Administrative Register, 1977, Issue Number 10.

2. The Board has adopted the proposed rules to provide a procedure for the filing and adjudication of grievances from Department of Fish and Game employees.

The only testimony received concerning these rules was from the staff attorney for the Department of Fish and Game on behalf of the Department. The Department requested that provisions be made in the formal grievance procedure to allow this Board to decide a grievance on the basis of the record of the proceedings which took place within the Department of Fish and Game. In order to avoid expensive duplication of the procedures to the parties, this Board has amended its proposed grievance procedure, to allow the parties to submit the grievance to this board for decision on the basis of the record of the proceedings before the Department of Fish and Game.

3. These rules have been adopted as they appeared in notice 24-3-8-27 with the following exception:

24.8.302 GRIEVANCE PROCEDURE (4) After the 10 days have elapsed from the date of service of the letter, the board may set the matter for a hearing DE NOVO. HOWEVER, UPON THE STIPULATION OF BOTH PARTIES TO THE GRIEVANCE, THE MATTER MAY BE SUBMITTED TO THE BOARD FOR DECISION ON THE RECORD OF THE PROCEEDINGS BEFORE THE DEPARTMENT.

APPROVED AND ADOPTED 12-20-77
CERTIFIED TO THE SECRETARY OF STATE 1-16-78

BY Brent Crosley
Chairman of the Board of Personnel Appeals

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF HEARING AID DISPENSORS

Adoption of Rule 40-3.42(2)-P4215 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Hearing Aid Dispensors published Notice No. 40-3-42-8 of a proposed adoption of new rules relating to public participation in board decision making on November 25, 1977 at page 870 ARM 1977, Issue No. 11.

2. The adoption incorporates, as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Adoption of Rule 40-3.86(2)-P8615 CITIZEN PARTICIPATION RULES - INCORPORATION BY REFERENCE

1. The Board of Professional Engineers and Land Surveyors published Notice No. 40-3-86-4 of a proposed adoption of new rules relating to public participation in board decision making on November 25, 1977 at page 881 ARM 1977, Issue No. 11.

2. The adoption incorporates as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF WATER WELL CONTRACTORS

AMENDMENT OF ARM 40-3.106(6)-S10630 SET AND APPROVE REQUIREMENTS AND STANDARDS-GENERAL

1. The Board of Water Well Contractors published Notice No. 40-3-106-3 of a proposed amendment of ARM 40-3-106(6)-S10630 on November 25, 1977 at page 883, ARM 1977, Issue No. 11.

2. The amendment changed certain requirements regarding the sealing of the annular space between the water well casing and the drill hole. The actual wording of the amendment is stated in full in the aforementioned notice.

The reason for the amendment is to make the rule conform to the original intent, which was not accurately stated. Thus, the Board has, by this change, reinforced the seal requirements so as to insure that the well is given completely adequate protection from contamination.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of rule 42-2.10(2)-S10040, -S10041, S10043, S10044, -S10045, S10046, -S10047, relating to the deferred payment. | ) | NOTICE OF ADOPTION OF RULE RELATING TO THE REGULATIONS CONCERNING INHERITANCE TAX -DEFERRED PAYMENT |

TO: All Interested Persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the application for determination of inheritance tax at page 905-907 of the 1977 Montana Administrative Register, issue 11.

2. The agency has adopted rule 42-2.10(2)-S10040, S10041, S10043, S10044, S10045, S10046 and S10047 with the following changes:

Under 42-2.10(2)-S10046 the word inhrent is a typographical error it should read inherent.

3. No comments or testimony were received. The agency has adopted the rule as proposed because 42-2.10(2)-S10040 to S10047 establish the procedure for deferring payment of inheritance taxes as provided by Section 91-4419, R.C.M. 1947, as well as detailing the larger range of factors the Department may consider in making its decision.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the amendment) of the rule 42-2.10(1)-S1040 ) relating to the transfers of joint interest property. | ) | NOTICE OF AMENDMENT OF RULE MAC 42-2.10(1)-S1040 regarding transfers of joint interest property. |

TO: All Interested Persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed amendment of a rule concerning the transfers of joint interest property at page 908-910 of the 1977 Montana Administrative Register, issue 11.

2. The agency has adopted rule 42-2.10(1)-S1040 as proposed.

3. No comments or testimony were received. The agency has adopted the rule as proposed because it reflects the changes brought about by the amending of Section 91-4405, R.C.M. 1947. The tax imposed where the survivor is not the decedent's spouse is no longer limited to the interest passing at death. Further changes were made to clarify the exception allowed where contribution can be shown and to explain the situation where there is more than one survivor.

4. The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the amendment of rule MAC 42-2.10(2)-S10030 | ) | NOTICE OF AMENDMENT OF RULE MAC 42-2.10(2)-S10030 regarding exemption provisions of inheritance tax regulations. |

TO: All interested Persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed amendment of a rule concerning the exemption provisions of inheritance tax regulations at page 911-914 of the 1977 Montana Administrative Register, issue number 11.

2. The agency has adopted the rule with the following changes: (text of rule with matter stricken interlined and new matter underlined.

42-2.10(2)-S10030, Subsection (1) should be amended to read:

(1) The provisions of Section 91-4414, R.C.M. 1947, allow certain exemptions to be granted to each person, institution, association, corporation, and body politic becoming beneficially entitled to property by virtue of the death of the decedent. Where the decedent dies before July, 1977, ~~T~~the exemption granted is to be applied in the computation of inheritance tax to the first $25,000 ~~so passing, unless, of course, the beneficiary is totally exempt from inheritance tax.~~ tax bracket. Where the decedent dies on or after July 1, 1977, the exemption granted is to be subtracted from the total value of property or beneficial interests transferred, with the tax then being imposed upon the remaining value.

42-2.10(2)-S10030, Subsection (7). The second sentence should be deleted as it is redundant and tends to confuse more than it explains.

3. No comments or testimony were received. The agency has adopted the rule as proposed because it reflects the changes in exemption amounts brought about by the amendment to Section 91-4414, R.C.M. 1947, and also sets out the various exemption amounts depending upon the law in effect at the time of death.

4. The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the amendment of rule 42-2.10(6)-S10100 INH-3) application for determination of inheritance tax (non-probate) | NOTICE OF AMENDMENT OF RULES INH-3 -- APPLICATION FOR DETERMINATION OF INHERITANCE TAX (NON-PROBATE) |

TO: All Interested Persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed amendment of a rule concerning the application for determination of inheritance tax at page 915 of the 1977 Montana Administrative Register, issue 11.

2. The agency has adopted rule 42-2.10(6)-S10100 with the following changes: (text of rule with matter stricken interlined).

Under Subsection 1

(1) This form is designed to comply with Sections 91-4321.1 and 91-4469 91-4470(2)(b) and 91-4471(1)(a), R.C.M. 1947, and is used only when the decedent owned no property requiring probate. The INH-3 must be submitted in duplicate.

3. No comments or testimony were received. The agency has adopted the rule as proposed because it reflects the repeal of Sections 91-3221.1 and 91-4469, R.C.M. 1947 and the enactment of Section 91-4470 and 91-4471, R.C.M. 1947.

The adoption of this rule is to become effective on February 24, 1978.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State February 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the amendment of rule MAC 42-2.18(6)-S18110 | ) | NOTICE OF THE AMENDMENT OF RULE MAC 42-2.18(6)-S18110 REGARDING THE PROVISION THAT APPLICATIONS FOR SPECIAL FUEL LICENSES MUST BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF REVENUE |

TO: All interested persons

1. On November 25, 1977, the Department of Revenue published notice of an amendment of Rule MAC 42-2.18(6)-S18110 regarding the provision that applications for special fuel licenses must be on a form prescribed by the department of revenue at page 927-1928 of the 1977 Montana Administrative Register, issue number 11.

2. No comments or testimony were received. The agency adopts the rule because it provides that the applications for special fuel license must be on a form prescribed by the Department. This amendment is to standardize the application process and give the Department better control over the issuance of the special fuel users licenses.

The adoption of this rule is to become effective on February 24, 1978.

RAYMON E. DORE
Director
Department of Revenue

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "1" | ) | NOTICE OF ADOPTION OF RULE DEFINING THE TERMS USED IN THE RULES ADOPTED PURSUANT TO THE HOMESTEAD TAX RELIEF ACT OF 1977. |

TO: All interested persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule defining the terms used in the rules adopted pursuant to the Homestead Tax Relief Act of 1977 at page 918-919 of the 1977 Montana Administrative Register, issue 11.

2. The agency has adopted the rule.

3. No comments or testimony were received. The agency has adopted the rule because the rule contains the definitions adopted by the electorate in the original act as well as definitions for terms used in the rules. The definitions from the act were included because they are used in the rules and it would be more convenient for the taxpayer to have them at hand.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "2" | ) | NOTICE OF ADOPTION OF RULE REGARDING WHO MAY APPLY FOR TAX RELIEF UNDER THE HOMESTEAD TAX RELIEF ACT OF 1977. |

TO: All interested persons:

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding who may apply for tax relief under the Homestead Tax Relief Act of 1977 at page 919-920 of the 1977 Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule because under Section 5(2), Chapter 457, Laws of 1977, the department is given the responsibility for determining who is eligible to apply for the tax relief. The department has determined that because the owner of the dwelling on January 1 is the person responsible for applying for the relief but may not be responsible for the payment of the tax, the relief should apply against the taxes due irrespective of who pays the tax. Section 84-406, R.C.M. 1947.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "3". | ) | NOTICE OF ADOPTION OF A RULE REGARDING THE STATE SHARE OF THE TAX RELATIVE TO THE HOMESTEAD TAX RELIEF ACT OF 1977. |

TO: All interested parties

1. On November 25, 1978, the Department of Revenue published notice of a proposed adoption of a rule regarding the state share of the tax relative to the Homestead Tax Relief Act of 1977 at page 920-921 of the 1977 Montana Administrative Register, issue 11.

2. The agency has adopted the rule with the following changes: (text of rule with matter stricken interlined and new matter underlined).

(2) Each ~~homeowner~~ eligible applicant will receive his share of his Homestead Tax Relief computed on the following formula: ~~State share of the tax liability equals the state supported mill levy times the smaller of the quantities: $600.00 or the total taxable value of the resident.~~ The smaller of the amounts "TOTAL" or first "FIVE THOUSAND DOLLARS" of the homestead's market value - times the class taxable percentage - times the appropriate real or personal state supported levy common to that levy district - times the annual funding factor.

3. No comments or testimony were received. The agency has adopted the rule because the rule is in response to the legislature's action in amending the Homestead Tax Relief Act to expire after the 1978 tax year. The legislature further amended the act to provide that the costs of administering the act shall be taken from the amount appropriated for homestead tax relief.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "4". | ) | NOTICE OF ADOPTION OF A RULE REGARDING THE PROPERTY TAX DUE ON HOMESTEAD. |

TO: All interested parties.

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding

the property tax due on homestead at page 921-922 of the 1977 Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because this rule implements the section of the act providing that the homeowner's tax liability will be reduced by the state share of tax liability and that the two amounts will be separately stated on the homeowner's tax bill.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "5". | ) | NOTICE OF ADOPTION OF THE RULE REGARDING THE APPLICATION AVAILABILITY FOR TAX RELIEF UNDER THE HOMESTEAD TAX RELIEF ACT OF 1977. |

TO: All interested parties

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding the property tax due on homestead at page 922 of the 1977 Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because this rule provides that the department will make the applications available to homeowners and specifies that the applications may be obtained in county assessors' offices and will be mailed for the 1978 tax year.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "6". | ) | NOTICE OF ADOPTION OF THE RULE REGARDING TIMELY FILING OF APPLICATIONS FOR HOMESTEAD TAX RELIEF. |

TO: All interested parties

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding the timely filing of applications for homestead tax relief at page 923 of the 1977 Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because this rule provides

that a homeowner must return his application 30 days after he recieves it to be eligible for tax relief. This rule states the department's policy of having the applications mailed by June 1 and returned by June 30. Also, the rule states that applications may be returned by mail.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "7". | ) | NOTICE OF ADOPTION OF THE RULE REGARDING ELIGIBILITY DETERMINATION OF HOMESTEAD TAX RELIEF. |

TO: All interested parties

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding eligibility determination of homestead tax relief at page 923-924 of the Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because under the provisions of the act the department has the responsibility to determine eligibility for relief. This rule provides a procedure whereby the homeowner may obtain relief if his application is denied.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "8". | ) | NOTICE OF ADOPTION OF THE RULE REGARDING THE RESPONSIBILITY OF THE STATE IN COMPUTING AND REMITTING STATE'S SHARE OF TAX LIABILITY TO THE COUNTIES. |

TO: All interested parties

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding the responsibility of the state in computing and remitting state's share of tax liability to the counties at page 924-925 of the Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because the rule clarifies the department's responsibility to the counties by certifying the state's share and remitting the relief to the counties by the dates specified in the act.

The adoption of this rule is to become effective on February 24, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| In the matter of the adoption of a proposed rule "9". | ) | NOTICE OF ADOPTION OF THE RULE REGARDING THE EFFECTIVE DATE OF THE HOMESTEAD RELIEF PROGRAM. |

TO: All interested parties

1. On November 25, 1977, the Department of Revenue published notice of a proposed adoption of a rule regarding the effective date of the Homestead Relief program at page 925-926 of the Montana Administrative Register, issue 11.

2. No comments or testimony were received. The agency has adopted the rule as proposed because this rule certifies that the Homestead Tax Relief program will be only for property tax due in 1977 and 1978.

The adoption of this rule is to become effective on February 24, 1978.

RAYMON E. DORE
Director
Department of Revenue

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

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| In the matter of the amendment of rules ARM 46-2.6(2)-S6180 and 46-2.6(2)-S6190, the repeal of rule ARM 46-2.6(2)-S6200, and the adoption of eleven new rules pertaining to voluntary institution licensing services. | ) ) ) ) ) ) | NOTICE OF THE ADOPTION OF 17 RULES AND THE REPEAL OF RULES 46-2.6(2)-S6180, 46-2.6(2)-S6190, AND 46-2.6(2)-S6200 PERTAINING TO CHILD CARE AGENCIES. |

TO: All Interested Persons

1. On July 25, 1977, the Department of Social and Rehabilitation Services published notice of the proposed amendment to rules ARM 46-2.6(2)-S6180 and 46-2.6(2)-S6190, the proposed repeal of rule ARM 46-2.6(2)-S6200, and the proposed adoption of eleven new rules concerning child care agencies, at page 115 of the 1977 Montana Administrative Register, issue number 7.

2. The agency has adopted the new rules with many editorial changes but no significant changes in substance. The editorial changes were required for purposes of clarity and organization, to make the rules easy to read and thus useable by the public. For purposes of clear organization within the ARM format, the agency determined that it would be better to repeal rules ARM 46-2.6(2)-S6180 and 46-2.6(2)-S6190, rather than to amend out all of the old language and substitute complete new language. Thus rules ARM 46-2.6(2)-S6180, 46-2.6(2)-S6190 and 46-2.6(2)-S6200 are repealed. Therefore, all rules pertaining to child care agencies are now found in the 17 new rules, which read as follows:

46-2.6(2)-S6180A CHILD CARE AGENCIES, PURPOSE (1) These rules establish licensing procedures and minimum standards for child care agencies. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180B CHILD CARE AGENCIES, DEFINITIONS The following definitions apply to all child care agency licensing and standards rules:

(1) "Child" means any person under the age of 18 years, and may also include a person 18 to 21 years of age if jurisdiction of the youth court is so extended over such person, or if such extension is otherwise permitted by law.

(2) "Child care agency" means any foster, or boarding home, in which 13 or more children are retained at any one time for full-time care.

(3) "Receiving home" means a child care agency which regularly receives children under temporary conditions until the court or probation office, the Department of

Social and Rehabilitation Services, or other appropriate social agency has made other provisions for their care.

(4) "Maternity home" means a child care agency of which the primary function is to provide care and maintenance of girls and women during pregnancy, childbirth, and post-natal periods.

(5) "Child care staff" means child care agency personnel who directly participate in the care, supervision and guidance of children in a child care agency.

(6) "Houseparent" means a child care agency staff member whose primary responsibility is the day-to-day care of children in a child care agency.

(7) "Department" means the Department of Social and Rehabilitation Services. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180C CHILD CARE AGENCIES, LICENSE REQUIRED (1) Every child care agency, as defined in 46-2.6(2)-S6180B, must be licensed under 46-2.6(2)-S6180D et seq.

(2) Failure of a child care agency to obtain or renew a license may subject the child care agency to any penalties established by law or these rules. (History: Sec. 10-1318 and 10-1319, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180D CHILD CARE AGENCIES, LICENSES (1) One-year licenses. The Department shall issue a one-year child care agency license to any license applicant which meets all minimum standards established by these rules, as determined by the Department after a licensing study.

(2) The Department shall deny a one-year license to any license applicant which fails to meet all minimum standards established by these rules.

(3) The Department shall renew a one-year license annually on the expiration date of the previous year's license if:

(a) The child care agency makes written application for renewal at least 30 days prior to the expiration date of its current license; and

(b) The child care agency continues to meet all minimum standards established by thes rules, as determined by the Department after a re-licensing study.

(4) If a child care agency makes timely application for renewal of a one-year license, but the Department fails to complete the re-licensing study before the expiration date of the previous year's license, the previous year's license will continue in effect for the time necessary for the Department to complete the re-licensing study and to make a determination of compliance with minimum standards.

(5) Provisional licenses. The Department may in its discretion issue a provisional license for any period up to 6 months to any license applicant which:

(a) has met all applicable standards for health and fire/life safety; and

(b) has agreed in writing to comply fully with all minimum standards established by these rules within the time period covered by the provisional license.

(6) The Department may in its discretion renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum standards within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed one year. (History: Sec. 10-1218, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180E CHILD CARE AGENCIES, LICENSE REVOCATION (1) The Department may in its discretion revoke a one-year or provisional license if the Department determines that:

(a) the child care agency is not in compliance with health or life/safety standards; or

(b) the child care agency is not in substantial compliance with any other licensing standards established by these rules; or

(c) the child care agency has made any substantial misrepresentations, either negligent or intentional, regarding any aspect of its operations or facility to the Department or members of the public or any other person.

(2) After revocation of a one-year license, the Department may, in its discretion and upon request ffrom the child care agency, issue a provisional license under the standards established under 46-2.6(2)-S6180D(5) to any child care agency whose license was revoked under subsection (1)(b) above. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180F CHILD CARE AGENCIES, HEARING (1) Any person dissatisfied because of the Department's refusal to grant a license or revocation of a license may request a hearing as provided in ARM 46-2.2(2)-P210 et seq. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180G CHILD CARE AGENCIES, LICENSING PROCEDURES (1) Application for a child care agency license must be made on form SS-15, "Application for a license for child care," and must be accompanied by the following items:

(a) A statement setting out the purpose and function of the child care agency, including the geographical area to be served by the agency, the type of child which the agency will accept for care, the source of referrals to the agency, and the specific services which the agency will provide;

(b) A statement setting out the administrative and

organizational structure of the child care agency, including the agency's status, as a corporation or other legal entity;

(c) If the child care agency is operated by a corporation, a copy of the corporation's articles of incorporation and by-laws, including any changes to the articles or by-laws submitted or proposed at the time of filing of the application for license;

(d) A statement setting out the child care agency's financial ability to provide stated services for one year, including the agency's sources of income and rates to be charged for specific services;

(e) A copy of the current report of audit completed by an independent auditor;

(f) A statement setting out the child care agency's staffing patterns, including a functional job description and qualifications required for each staff position;

(g) A copy of the written admissions policy and procedures;

(h) A statement setting out each type of records to be kept by the child care agency;

(i) A statement setting out the provisions made by the child care agency for physical and mental health services for the children in care;

(j) A copy of the written discipline policies;

(k) A fire inspection report and a health inspection report, covering all parts of a child care agency's facilities, including capacity recommendations;

(l) A statement from the office of public instruction on the child care agency's educational plan and services, specifically including an evaluation of educational programs available to the children to be served by the agency;

(m) Evidence that the child care agency is in compliance with all applicable rules of the department of health and environmental sciences, including rules governing nutrition;

(n) Results of tuberculin tests conducted on all full and part time employees of the child care agency, as required by the department of health and environmental sciences;

(o) A statement on each employee, to be provided by the employee's physician, establishing the employee's physical health;

(p) A statement setting out all insurance carried by the child care agency, including public liability insurance and fire insurance; and

(q) Drawings of the floor plans of each building including function and dimensions of each room.

(2) Application for renewal of license must be made on form SS-15, "Application for a license for child care," and must verify the continuing accuracy of all information submitted under subsection (1), above, or must

contain necessary information to correct or complete all items listed in subsection (1), above.

(3) Upon receipt of an application for license or renewal of license, the Department shall conduct a licensing study, to determine if the applicant meets all applicable standards for license established in these rules.

(4) If the Department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant of the specific deficiencies or errors, and the applicant may submit the required or corrected information. The Department shall not issue a license or renew a license until it receives all required or corrected information.

(5) All items required to be submitted under subsections (1) or (2) above, for license or renewal of license, are available to the public, except items (1)(d), (1)(e), and (1)(o), which are confidential. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180H CHILD CARE AGENCIES, RECORDS (1) Each child care agency must maintain accurate and current records on each child in care, as follows:

(a) Records to be kept by all child care agencies:

(i) Identifying information on the child and his or her family, including the child's name, date and place of birth, sex, religion, race, names of relatives, and other necessary information;

(ii) Date of the child's admission and name of the referring party;

(iii) Date of the child's discharge and authorization for the discharge;

(iv) Documentation concerning a child's specific medical problems; and

(v) A dated record of significant occurences for each child while in care.

(b) Additional records to be kept by all child care agencies except receiving homes: (i) A copy of the court order, parental agreement, consent decree, or consent adjustment authorizing the child's placement and any other pertinent court action concerning the child;

(ii) A report stating the reasons for placement and the current case plan;

(iii) A social study on the child and his or her family;

(iv) Psychological or psychiatric information on the child if psychological or psychiatric services have been provided to the child at any time;

(v) Quarterly progress reports on the child's reaction to the placement and services provided; and

(vi) Quarterly reports from any parties providing any services to the child outside the child care agency.

(c) Additional records to be kept by all child care agencies except receiving homes and maternity homes:

(i) A copy of the most recent physical examination of the child.

(2) Each child care agency must keep an accurate monthly record showing the number of children in care, the number admitted and discharged, the children's ages and sex, and the current average length of stay. This information must be submitted to the Department upon the Department's request. (History: Sec. 10-1318, R.C.M. 1947; NEW Eff. 1/26/78.)

46-2.6(2)-S6180I CHILD CARE AGENCIES, CONFIDENTIALITY OF RECORDS ON CHILDREN IN CARE (1) All records maintained by a child care agency pertaining to an individual child are confidential and are not available to any person, agency or organization except as specified in subsections (2) through (5) of this section, below.

(2) All records pertaining to an individual child are available upon request to:

(a) The child's parent, guardian, legal custodian, or attorney;

(b) A court with current jurisdiction over the placement of the child or any court of competent jurisdiction issuing an order for such records;

(c) A mature child to whom the records pertain, absent specific and compelling reasons for refusing specific records; or

(d) An adult who was formerly the child in care to whom the records pertain.

(3) Records pertaining to significant occurences in relation to a specific child may be reviewed by the referral agency.

(4) All records pertaining to individual children placed by the Department are available at any time to the Department or its representatives.

(5) Records pertaining to individual children not placed by or in the custody of the Department are available to the Department solely for purposes of licensing or relicensing the child care agency, to assure that required records are being kept for all children in care. For this purpose only, the Department may in its discretion accept any evidence it finds appropriate to show the existence of such records, including, if necessary, on site access to individual records by an authorized representative of the Department. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180J CHILD CARE AGENCIES, REPORTS (1) Reports by child care agencies to the Department: A Child care agency must report any of the following changes to the Department prior to the effective date of the change:

(a) A change of administrator of the child care

agency;

(b) A change in location of the child care agency;

(c) A change in name of the child care agency; or

(d) A significant change in the child care agency's organization, administration, purposes, programs, or services.

(2) Reports by child care agencies to referring parties: A child care agency, except receiving homes, must provide the following reports to any referring party for each child referred by that party:

(a) A case plan;

(b) A quarterly progress report, including any changes in the case plan, and the child's reaction to the placement and services provided;

(c) Copies of any reports from other parties providing services to the child; and

(d) A statement of reasons for denial of admission of any child referred.

(3) Reports by referring parties to child care agencies: A child care agency must require any referring agency which is working with the family of a child in care or with other persons whose welfare is substantially connected with the welfare of the child in care, to provide quarterly progress reports on that work to the child care agency. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180K CHILD CARE AGENCIES, CASE PLANS (1) Each child care agency except receiving homes must develop a case plan for each child in care. A case plan is a specific plan for providing care and services of any kind to a specific child. The child care agency must seek assistance in developing and reviewing the case plan from the referring party, the child, all significant child care staff, and the parents, guardian, or legal custodian of the child.

(2) The case plan must include the following:

(a) The child's specific needs and the manner in which these needs will be met,

(b) The service goals with corresponding time frames; and

(c) A plan for discharge with recommendations for postplacement goals and follow-up services.

(3) The case plan must be developed within 30 days after admission and be reviewed at least quarterly.

(4) The child care agency, the referring party, the child, and his or her family must have an understanding of the placement goals, mutual responsibilities, and privileges. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180L CHILD CARE AGENCIES, ADMISSIONS, DISCHARGE, AND FOLLOW-UP (1) Admissions: Each

child care agency, excluding receiving homes, must have a written process of admissions, which includes the following minimum requirements:

(a) A referal agency must submit a social study completed on the child and his or her family within the last 12 months to the child care agency's admissions person or committee. In the case of non-agency referrals, the child care agency has the responsibility to compile all necessary social information.

(b) In all referrals, the child care agency shall assist the referring agency or family to review all available alternatives in order to assure appropriate placements.

(c) The admission person or committee shall review all information and resources to determine the appropriateness of placement, including age and developmental needs of children accepted into the child care agency's population.

(d) When any child is placed in Montana from another state which is a member of the Interstate Compact on the Placement of Children, such placement must go through an agency or court in the sending state which will request the state's compact administrator to notify the compact administrator in Montana. No child subject to the compact may be placed within Montana until all necessary procedures pursuant to the compact have been completed.

(e) The child care agency's policy shall provide for and encourage pre-placement visits by the child and family and may allow exceptions for emergency placements and geographical distances. The referring parties should be encouraged to assist with these arrangements.

(f) When emergency placements are unavoidable, the same requirements apply, although carrying out the steps may have to be adjusted to the realities of the situation, except in the matter of interstate compact procedures.

(g) All types of residential care and services shall be for planned periods of time to be reflected in the child's case plan.

(2) Receiving homes, where admission is made in emergency and temporary situations, must have a written admissions policy based on the record requirements as provided in rule 46-2.6(2)-S6180H.

(3) No child under the age of 24 months may be placed in a child care agency for longer than 24 hours unless part of a sibling group being placed together.

(4) Referrals may only be accepted from parties legally authorized to place children. Authorized placing parties include, but are not limited to, the Department, a district court, juvenile probation offices, parents of the child, department of institutions, licensed child placing agencies, tribal courts, and federal probation and parole,

depending upon the legal status of the child.

(5) Discharge: A discharge plan shall be included in the case plan for the child and re-evaluated at least quarterly. The discharge plan shall include recommendations for realistic follow-up service plans to the referring party. Discharge plans are not required for receiving homes.

(6) Post-placement services shall be provided by either the agency that worked with the child or the agency that worked with the family. These services shall be a continuation of the planned change effort and shall aid the child in the readjustment to community life in a family, group, or independent setting.

(7) In the case of parental referrals, it shall be the responsibility of the child care agency to arrange for support services to the family and child and continue monthly follow-up contacts for six months, except for relinquishments in which case follow-up contacts shall depend upon the individual's best interests. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180M CHILD CARE AGENCIES, CHILD CARE, DEVELOPMENT, AND TRAINING (1) Case plan:

(1) Schedule: The daily schedule must be developed to meet the children's needs.

(2) Clothing: The child care agency must ensure that each child is supplied with his or her own clothing suitable to the child's age and size. It must be comparable to the clothing of other children in the community.

(a) The initial wardrobe shall be supplied by the referring agency and maintained by the child care agency. Each child's clothing must be inventoried at the time of placement and upon discharge.

(b) Children must have some choice in the selection of their clothing.

(3) Personal hygiene: Children must be given training in personal care, hygiene, and grooming and shall be provided with the necessary equipment.

(4) Nutrition: Each child must have a daily balanced diet containing all basic foods in amounts necessary for promoting and maintaining good health.

(a) Children must have a minimum of three meals daily and snacks.

(b) Children with specialized dietary problems must have diets prescribed by a physician which must be carefully observed.

(c) Each child care agency must consult with a nutritionist in order to maintain adequate nutritional standards.

(5) Recreation: The child care agency must provide indoor and outdoor recreation so that every child may participate.

(a) There must be equipment to help children in

muscular coordination and physical development.

(b) The child care agency must allow children to participate in community functions and recreational activities unless such activity would place the child or others in danger.

(6) Privacy and individualism: The child care agency's facility and staff shall allow privacy and individualization of the child.

(a) The child care agency shall provide a separate bed, separate storage space for clothing and personal articles, and a place to display his or her creative works and symbols of identity.

(b) Each child must have access to a quiet area where he or she can withdraw from the group when appropriate.

(7) Money: The child care agency must teach children the value and use of money.

(a) Money earned by a child or received as a gift or allowance must be his or her personal property and accounted for separately from child care agency funds.

(b) If the child care agency is partly supported by institutional production on a commerical basis as part of the training or treatment program, the child in care must be protected from work hazards; compliance with child labor laws and minimum wage laws must be assured. Arrangements must be made by the agency to compensate any child who assists with such commercial production.

(8) Education: The child care agency must arrange an education appropriate for each child (except Receiving Homes).

(a) Community educational resources or the child care agency's resources must be used to meet the educational needs of children who cannot attend regular classes.

(b) The child care agency must provide for the educational needs of the children in social living, sex education, consumer education, and career planning.

(c) Each child care agency must assure that all school age children in their care receive educational credit from an accredited school unless otherwise approved by the Department.

(d) If a formal educational program is provided within the child care agency, the program must be accredited by the state office of public instruction or the child care agency must arrange for children to receive school credit through an accredited school.

(e) Other supplemental educational programs of each child care agency must be reported to the office of public instruction and must receive their approval, if deemed appropriate by the office of public instruction.

(9) Religion: Opportunity must be provided each child for practicing the religious beliefs and faith of his or her preference as an individual or group. The child care agency shall utilize available services, facilities, and activity programs of the community. Only

parents, legal guardian, or legal custodians may require a child to participate in religious activities without the child's consent.

(10) Culture: Each child must be given the opportunity to identify with his or her cultural heritage and should be encouraged to do so if the child shows any indication whatsoever of such interest.

(11) Physical care: The child care agency shall ensure quality physical care of children in residence.

(a) Every child care agency must have available the services of at least one physician.

(b) If a child has not received a physical examination prior to placement, such child must have a complete physical examination within 14 days after admission to the child care agency and yearly thereafter. If more frequent examinations are recommended by a physician or dictated by the child's health, it is the child care agency's responsibility to assure such services.

(c) A child who has not had a dental examination within a year prior to placement must have one within 90 days after admission. All necessary dental work shall be done. Re-examination shall be done at least annually.

(d) Isolation of a child for health related reasons shall be according to need, as determined by the staff and physician.

(e) Provisions for treatment of diseases, remedial defects or deformities, and malnutrition must be made immediately upon the physician's recommendation with notification to the referring agency.

(f) Individual, complete medical and dental records must be kept for each child. This does not apply to maternity homes.

(g) Necessary immunizations are required preferably prior to admission, or immediately after admission. This does not apply to maternity homes.

(h) The child care agency must take all reasonable precautions to ensure safety from accidents to residents and staff.

(i) Exception: In the case of receiving homes, all items except (d) and (h) listed above are the responsibility of the referring party. The receiving home shall request that the children in its care receive all of these services. Receiving homes must keep medical records on file as required by local health officials.

(12) Discipline: Each child care agency must have a written policy for the discipline of children in care. Copies must be made available to all staff, referring parties, parents, and the child. This policy must include the philosophy of discipline, all methods of discipline permitted, and the purpose of discipline as it relates to the ongoing learning and development process.

(a) Discipline must not be physically or emotionally damaging.

(b) There must be no cruel, harsh, or unusual punishment.

(c) Verbal abuse of child is prohibited.

(d) No child of any age can ever be shaken or hit.

(e) Only child care staff may discipline a child.

(f) Children must not be denied food, mail or visits with their families as punishment.

(g) Discipline methods must meet the needs of the child.

(h) No disciplinary practices of any sort shall be employed which are humiliating or degrading to the child or which undermine the child's self-respect.

(i) Physical holding by a staff member must be used only to protect the child from injury to self or others. The use of physical holding and the length of time it was used must be recorded in the child's case record. Mechanical restraints may only be used with written approval of the methods and procedures from the Department.

(j) Children must not be placed in a locked room. Imposed isolations shall not exceed 15 minutes.

(k) A report shall be completed by any child care staff involved in physical discipline. An investigation of the incident shall be conducted by the child care agency and a complete report placed in the child's case record and available for inspection by the licensing agent and referring party.

(14) Psychiatric and psychological services: Psychiatric and psychological services, including examination and treatment, shall be arranged for children as needed. Psychiatrists who treat children or serve as consultants to the child care agency must be licensed to practice, and must be able to offer the services needed in a child care program. Financial responsibility for such services must be negotiated between the child care agency and the referring party. Receiving homes must not provide or arrange for psychiatric and psychological services, but should advocate for such services if necessary. (History: Sec. 10-1318, R.c.m. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180N CHILD CARE AGENCIES, PERSONNEL

(1) Personnel policy. Each child care agency must have a written personnel policy covering the following items: job qualifications, job descriptions, supervisory structure, salary schedules, fringe benefits, insurance, hours of work, and performance evaluations.

(2) Personnel records. Each child care agency must maintain a personnel file for each employee. The personnel file must contain: application for employment, reports from references, record of in-service training or other training acquired after the date of hiring, reports of health examinations, and periodic performance evaluations.

(3) General personnel qualifications. (a) All personnel of a child care agency must meet the following general qualifications:

(i) Be at least 18 years of age;

(ii) Be of good character;

(iii) Be emotionally mature and stable;

(iv) Like and understand children;

(v) Be in good general health;

(vi) Understand the purpose of the child care agency and be willing to carry out its policies and programs;

(vii) Meet any minimum qualifications for the position established by these rules.

(b) All child care staff must be trained to administer first aid.

(4) Health prerequisites to hiring. A child care agency must require a prospective employee to submit the following items as prerequisites to hiring:

(a) Report of a recent physical examination or a statement addressing any physical, mental or emotional conditions which could create a hazard for children in care or personnel.

(b) Report of the results of a tuberculin test; and

(c) Documentation showing that any department of health and environmental sciences requirements for tuberculin follow-up have been met.

(5) In-service training. Each child care staff member must complete 15 hours of in-service training each year, in an area directly related to the staff member's duties. This training must be documented in each staff member's personnel file. The training may include formal course work, workshop attendance, or the reading of appropriate literature.

(6) Administrator. (a) A child care agency must designate an administrator to direct and manage the child care agency's work in all areas. The administrator's duties specifically include but are not limited to directing the care and services provided to children in care, personnel matters, and any other specific matters determined by the board of directors of the child care agency.

(b) An administrator must meet the following minimum qualifications in addition to the general qualifications for child care agency personnel:

(i) Have a bachelor's degree, supplemented with experience in an area relating to professional child care or appropriate graduate education;

(ii) Have a thorough understanding of the purposes and programs of child care agencies in general; and

(iii) Have general leadership, administrative, and management ability, including the ability to supervise child care personnel.

(7) Social workers. (a) Each child care agency except receiving homes must employ an adequate number of trained social workers to provide the following services

for each child in care:

(i) To plan for a child's admission, coordinate the case plan and overall treatment plan, negotiate for the necessary resources for the child, and prepare the child for discharge and return to the family or other placement;

(ii) To serve as advocate for the child and liaison with the family, the referring party, and the community;

(iii) To prepare and maintain all required records and reports regarding the child;

(iv) To provide post-placement plans and services and to make the necessary referrals;

(v) To assist the child and staff to adjust to the child's placement; and

(vi) To record the child's reactions to the child care agency, school, other children, staff, and family, and to participate in all staff discussion regarding progress and plans for the child.

(b) A social worker must meet the following minimum qualifications in addition to the general qualifications for child care agency personnel:

(i) Have a bachelor's degree in a behavioral science and experience in areas related to child care or services; or

(ii) Have a reasonable equivalent to the above.

(7) Houseparents and group care staff. Houseparents and group care staff must meet the following minimum qualifications in addition to the general qualifications for child care agency personnel:

(a) Be patient, flexible, able to set limits and able to function in emergencies; and

(b) Be capable of constructive relationships with children in their care.

(9) Maintenance personnel. A child care facility must employ adequate maintenance personnel to operate the physical plant efficiently without reliance upon child care staff members or children in care. Maintenance personnel must meet the general qualifications for child care agency personnel.

(10) Education. If a child care agency conducts a formal education program for children in care, teachers must have the same minimum qualifications as comparable teachers in the public and private schools of Montana.

(11) Health and nutrition. (a) Every child care agency must employ or have easy access to the following professionals:

(i) A licensed physician;

(ii) A licensed dentist;

(iv) A qualified nutritionist.

(b) Every child care agency except maternity homes must provide for regular periodic review of the health records of all children in care by a registered nurse or other appropriately qualified health professional, to

assure the continued health care of the children.

(12) Work hours. A child care agency must maintain adequate child care staff to assure that no staff member, particularly house parents, is burdened with excessive working hours or responsibilities.

46-2.6(2)-S61800 CHILD CARE AGENCIES, CHILD STAFF RATIO AND EMERGENCY OVERFLOW (1) Ratios. Each child care agency must maintain at least the minimum child/staff ratio. "Child/staff ratio" means number of children in care per each on-duty care staff member and is determined by the following rules:

(a) To compute the ratio, children are grouped by age into two groups: "younger children" (children under 6 years of age), and "older children" (children 6 years of age and older).

(b) Children of child care staff members, including foster children, who live on the child care agency premises, must be counted in computing child/staff ratios.

(c) The child/staff ratio may not be rounded to the nearest whole number. Example: If the required ratio is 1 to 7, and the child care agency has 8 children in care, 2 staff members must be on duty.

(d) Child care agencies other than receiving homes must use the actual number of children in care each day to compute the child/staff ratio. Receiving homes must use the average daily population of children served for the previous year in computation of the child/staff ratio.

(e) Child care agencies which care only for "younger children" or for both "younger children" and "older children" must maintain a minimum child/staff ratio of 1 to 7 at all times.

(f) Child care agencies, other than maternity homes, which care only for "older children" must maintain the following minimum staff ratios:

(i) from 3:00 p.m. to 11:00 p.m., 1 to 8; and

(ii) from 11:00 p.m. to 3:00 p.m., 1 to 10.

(g) Maternity homes must maintain the following minimum child/staff ratios:

(i) from 7:00 a.m. to 8:00 p.m., 1 to 15; and

(ii) from 8:00 p.m. to 7:00 a.m., 1 to 25. However, during this period, additional staff must be available for duty within 30 minutes.

(h) During regular vacation periods for children, a child care agency may request the Department to lower temporarily its child/staff ratios by excluding from the daily count of children in care any child who is absent for vacation for more than 7 consecutive days.

(2) Emergency overflow. "Emergency overflow" means a child care agency providing care for more children than it is licensed to care for. Emergency overflow is subject to the following rules:

(a) The Department may approve emergency overflow

on a case-by-case basis, upon request from a child care agency and a showing by the agency that an emergency requires additional placements. Emergency overflow may not exceed two placements in addition to the number permitted by the child care agency's license.

(b) A period of emergency overflow may not exceed 14 days of care for any one child.

(c) A child care agency may not use more than 60 days of emergency overflow per calender year.

46-2.6(2)-S6180P CHILD CARE AGENCIES, FINANCES

(1) Each child care agency shall:

(a) Have a sound financial plan to carry out its defined purposes and provide proper care for children;

(b) Have sufficient funds or resources for its first year of operation and be able to furnish evidence to that effect;

(c) Maintain financial records of all receipts, disbursements, assets, and liabilities; and

(d) Provide for an annual audit of all accounts by an independent auditor who is not regularly employed by the child care agency or a member of the board of directors.

(2) The child care agency shall provide, for initial licensing and for annual relicensing thereafter, a copy of the current report of audit by the independent auditor.

(3) The child caring agency shall provide the licensing agent, the Department, and all referral parties a specific listing of items included in their rate charged. This rate and its specific coverage must be verified by an independent auditor.

(4) The child care agency must notify all appropriate referral and financially responsible parties of intended rate increases at least four months prior to the anticipated effective date.

(5) Financial responsibility for medical and dental treatment shall be established prior to placement and shall usually lie with the parent, guardian, custodian, and/or referring party of the child.

(6) The child care agency shall be continuously assured of enough money, in addition to goods in kind (e.g., donations of food, clothing), to provide for the proper care and reasonable development of the children for whom it has assumed responsibility or intends to assume responsibility. (History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.)

46-2.6(2)-S6180Q CHILD CARE AGENCIES, PHYSICAL PLANT

(1) Adequate, level playground space must be provided, taking into consideration the age of the youth served, the recreational resources of the community, and any change in the children in care. Playground space shall be kept free of all debris.

(2) The child care agency's grounds shall be attractive-

ly and informally planned, and shall be kept clean. Landscaping shall be of appropriate height, as required to safeguard against any hazardous conditions.

(3) All buildings used by the child care agency and all new construction or remodeling of existing buildings, shall comply with state and local building codes and shall meet the requirements of local zoning ordinances. All new construction or remodeling of existing buildings must comply with state and/or local building codes..

(4) All buildings must conform to the regulations of the state department of health and environmental sciences, county health department, or city health department, whichever is applicable as to sanitation. This will include water supply, sewage system, garbage disposal, toilet facilities, screening of windows and doors, preparation of food, and handling of utensils.

(5) Aall buildings shall meet the requirements of the city or state fire marshal.

(6) All buildings must be inspected by appropriate building, fire, and sanitation agencies at intervals as designated by the agencies. All recommendations shall be carried out.

(7) Fire, life, and safety inspections shall include recommendations for capacity of each building of the child care agency.

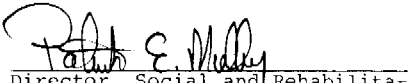
(8) There shall be one room per separate living facility that may be used for health-related isolation purposes.

(9) Children must have indoor areas for quiet, reading, study, relaxing, and recreation. There must be at least 40 square feet per child. Bedrooms, halls, kitchens, and any rooms not used by children must not be included in the minimum space requirement.

(10) A sleeping room must contain at least 50 square feet per person. Bedrooms for single occupancy must have at least 80 square feet.

(11) Sketches of floor plans of all child care agency facilities giving measurements and purpose of rooms must be submitted to the licensing agent. Any alterations or expansions of existing buildings or construction of new buildings shall require floor plans to be submitted to the licensing agent (see section 46-2.6(2)-S6180G(1)(q)).
(History: Sec. 10-1318, R.C.M. 1947; NEW, Eff. 1/26/78.

3. No comments or testimony were received. The agency has adopted the new rules and repealed the existing rules because the rules for child care agencies have not been substantially revised since 1967. There is critical need to provide new standards and definitions in this area, to conform to Montana's progress in the area of residential care for children over the past ten years.



Director, Social and Rehabilitation Services

Certified to the Secretary of State January 16, 1978.

OFFICE OF PUBLIC INSTRUCTION

REASON FOR ADOPTING EMERGENCY RULE

Although required by Montana law, several Montana schools have been unable to furnish speech services to their handicapped students due to a shortage of licensable speech pathologists. This lack of sppech services seriously affects the health and welfare of the speech/language impaired students. Because these services are indispensable to an adequate education of certain children, the Office of Public Instruction deems it important to secure speech aides for the balance of the current school year. Therefore, the emergency rule procedure is being used. Persons fulfilling the qualifications set out in the proposed amendment are presently available. School districts now developing and/or administering special education programs have vacant speech pathology positions. The Board of Speech Pathologists and Audiologists have endorsed the following emergency rule which has been determined necessary by the Office of Public Instruction:

48-2.18(34)-S18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS

(1) Except as provided in subsections (2) and (3), all public school personnel employed as speech pathologists and audiologists must have their license number on file with the Special Education program in the Office of the Superintendent of Public Instruction. Supervision shall be in accordance with the provisions of the individual's license.

(2) Approval of an individual who does not meet full requirements for licensure in speech pathology under Sections 66-3901 through 66-3913 RCM 1947 may be given if the individual meets the criteria which follow and applies to the Superintendent of Public Instruction for approval to deliver speech therapy service.

(a) Bachelor's degree with a major in speech and hearing verified by official transcripts.

(b) 175 approved supervised clock hours in speech and hearing verified by a training institution.

(3) (a) Approval of an individual who does not meet full requirements for licensure to deliver speech services in Montana schools will not be continued after the 1978-79 school term.

(b) Approval will be given only to an applicant who has an offer of employment from a school which can document an inability, after a comprehensive recruitment procedure, to employ a licensed speech therapist. Documentation of comprehensive recruitment efforts should include:

(i) Copies of correspondence with a minimum of 20 institutions of higher education offering graduate level training in speech pathology, and

(ii) Evidence of advertising in appropriate professional journals and recruitment through professional associations.

(c) Individuals approved to deliver speech services must be supervised by a licensed speech pathologist with a minimum of four on-site supervisory contacts per month of no less than three hours per contact. All supervisory contacts shall be recorded.

(d) The supervisor shall be responsible only for appropriate supervision of the applicant's therapeutic plan and proposed procedures. The school district shall be responsible for assuring implementation of the approved plan and procedures.

(History: Sec. 75-7802(2) and Sec. 75-7813.1, R.C.M. 1947; Eff 8/25/77; EMERG EFF 12/29/77.)

VOLUME 37 OPINION NO. 99
BOARD OF MEDICAL EXAMINERS - Powers to license use of diagnostic, topical drugs by optometrists;
BOARD OF OPTOMETRISTS - Licensing functions concerning use of diagnostic, topical drugs by optometrists;
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING - Licensing use of diagnostic, topical drugs by optometrists; powers of Board of Medical Examiners and Board of Optometrists; DRUGS - Licensing use of diagnostic, topical drugs by optometrists;
OPTOMETRISTS - Power of Board of Medical Examiners to license use of diagnostic, topical drugs by optometrists.
SECTIONS 66-1301(1)(b), 66-1301.1 and 66-1305.1, R.C.M. 1947.

HELD: The word "board" as used in Section 66-1305.1, R.C.M. 1947, means the Board of Medical Examiners.

16 December 1977

Board of Optometrists
Department of Professional and
Occupational Licensing
LaLonde Building
Helena, Montana 59601

Dear Board Members:

You have requested my opinion concerning whether the word "board" in Section 66-1305.1, R.C.M. 1947, means the Board of Optometrists or the Board of Medical Examiners.

Section 66-1305.1, R.C.M. 1947, provides:

> Course required. (1) In addition to the requirements of 66-1305, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometry with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.
> (2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

(Emphasis added.)

The section is new. It was enacted by the 1977 legislature in conjunction with other amendments which change Montana law concerning the use of drugs by optometrists. Laws of Montana (1977), Ch. 361. The amendments permit limited use of diagnostic, topical drugs in connection with eye and vision examinations and specifically authorize "the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics." Section 66-1301(1)(b), R.C.M. 1947 (as amended). Prior to the 1977 amendments, optometrists were wholly prohibited from using drugs. See Laws of Montana (1959), Ch. 252, sec. 1.

The use of drugs by optometrists is conditioned upon compliance with the provisions of Section 66-1305.1. Optometrists who are presently licensed to practice in Montana may use diagnostic drugs only if they complete the course and pass the examination described in that section. All other persons who hereafter apply for registration as optometrists under the licensing provisions of Chapter 13 of Title 66 must have completed an approved course in diagnostic drugs in addition to satisfying all other licensing requirements. Section 66-1305.1(1), R.C.M. 1947.

The word "board" is used without further designation in subsections (3) and (4) of Section 66-1305.1. Subsection (1) expressly refers to the "board of medical examiners" and the "board of optometry." Your question is, to which board do subsections (3) and (4) refer? The answer determines which board is delegated the power under subsection (4) to create, administer, and score the examination administered to presently licensed optometrists wishing to use drugs in their practice and to issue certificates to those passing such examination.

Section 66-1305.1 is a part of the optometry regulation chapter generally administered by the Board of Optometrists. Sections 66-1301 through 66-1318, R.C.M. 1947. That chapter includes a definition section. Section 66-1301.1, R.C.M. 1947, provides in relevant part:

> Definitions. Unless the context requires otherwise, in this act:
> (1) "Board" means the board of optometrists, provided for in Section 82A-1602.19; * * *
> * * *
>
> (Emphasis supplied.)

This section creates a general rule, or presumption, that "board" means "board of optometrists." However, the general rule does not apply to Section 66-1305.1 because "the context requires otherwise."

As already noted, Section 66-1305.1 is new. '"The meaning of a given term employed in a statute must be measured and controlled by the connection in which it is employed, the evident purpose of the statute, and the subject to which it relates."' Fletcher v. Paige, 124 Mont. 114, 120, 220 P.2d 484 (1950). Placing the new provision in the chapter pertaining to the Board of Optometrists is not conclusive as to the legislature's intention concerning the definition of "board," see Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, 147 Mont. 271, 277, 411 P.2d 744 (1966), although the existing definition of Section 66-1301.1 is entitled to some weight in determining legislative intent, see Fletcher v. Paige, supra, 124 Mont. at 119. A close examination of the language of Section 66-1305.1 rebuts any initial presumption which may arise from the inclusion of the section in the optometry chapter. Subsection (1) of Section 66-1305.1 explicitly grants the Board of Medical Examiners a role in the licensing of optometrists, empowering it to prescribe a course of study concerning use of diagnostic drugs in the practice of optometry and thereby refuting any notion that regulation of optometry is within the exclusive province of the Board of Optometry. Although the Board of Optometry is given a role prescribing such course of study, it is a limited one of "consultation and approval," in effect giving it a veto power over decisions of the Board of Medical Examiners.

In subsection (3) of Section 66-1305.1, the word "board" clearly refers to the Board of Medical Examiners. The subsection is an express limitation on the Board of Medical

Examiners' power to prescribe a course of study in diagnostic drugs, requiring that the course must be conducted at an accredited educational institution. The additional language "[t]he course must also be approved by the board" (emphasis supplied), does not grant the Board of Optometrists approval powers but merely makes clear that the required course must be both conducted at an accredited institution and approved by the Board of Medical Examiners; i.e., conducting the course at an accredited institution does not vitiate the approval requirement of subsection (1). Thus, the word "board" in subsection (3) means Board of Medical Examiners.

The word "board" in subsection (4) also refers to the Board of Medical Examiners. Since "board" is used in subsection (3) to refer to the Board of Medical Examiners, it is unlikely and illogical that the legislature intended to refer to a different board when it employed the word a second time. Furthermore, the word "board" in both subsections (3) and (4) is used as an abbreviation, much like a pronoun, referring back to an antecedent. Although subsection (1) mentions two different boards, the Board of Optometrists' role is secondary and ancillary to the Board of Medical Examiners' expressly delegated powers. The Board of Medical Examiners is the principal or primary "board" and is the preferred antecedent.

The plain and obvious purpose of Section 66-1305.1 is to ensure minimum training, knowledge and competence of individual practitioners of optometry who wish to employ diagnostic drugs. In the process of enacting Section 66-1305.1, the legislature considered but rejected delegating powers and responsibilities thereunder to the Board of Optometrists. As originally proposed in the 1977 legislature (S.B. 105) the powers under Section 66-1305.1 would have vested in the Board of Optometrists. Thereafter, the bill was amended to make provision for the Board of Medical Examiners. Delegating the Board of Medical Examiners with the authority to prescribe the course in diagnostic drugs, administer and score tests on diagnostic drugs, and certify competency in diagnostic drug use was logical and reasonable. Use of drugs is a specialized, technical area, and determinations concerning minimum requirements for such training, knowledge and competence presuppose the drug expertise of the administrative body which establishes the requirements. At the time of enactment of Section 66-1305.1, medical practitioners were the sole source of expertise in the use of drugs in connection with eye examinations. Prior to enactment of S.B. 105, optometrists were

not permitted to employ drugs in their examinations and the training, knowledge and competence of optometrists heretofore licensed in Montana have not been tested with respect to the use of diagnostic drugs. On the other hand, the use and prescribing of drugs is an integral part of the practice of medicine. Opthamology is a medical specialty in diagnosis and treatment of diseases, injuries and abnormalities of the eye. Both the Board of Medical Examiners (with the exception of one of its seven members) and the Board of Optometrists (all three members) are composed of licensed members of the professions which they license and regulate. Sections 82A-1602.15 and 82A-1602.19, R.C.M. 1947. It is obvious that while the Board of Medical Examiners, through its members, have training and expertise in the use of diagnostic drugs in the examination of eyes and vision, the Board of Optometrists and its members presently do not.

THEREFORE, IT IS MY OPINION:

The word "board" as used in Section 66-1305.1, R.C.M. 1947, means the Board of Medical Examiners.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 100

MUNICIPAL GOVERNMENTS - Licensing, interstate commerce, beer distributors, professions and occupations;
LICENSES - Municipal governments, interstate commerce, beer distributors, professions and occupations;
SECTIONS 11-901 et seq., 4-4-406, 4-4-201, 93-2010, 66-401 et seq., R.C.M. 1947.

HELD:

1. A city can license the local aspects of interstate commerce, but may not make a local license a condition to engaging in interstate commerce, nor impose direct burdens or impediments on interstate commerce.

2. A city may license a beer distributor pursuant to Section 4-4-406, R.C.M. 1947, but may not thereby limit or make ineffective a state license.

3. A city is precluded from licensing an enterprise whose regulation has been preempted explicitly or impliedly by the state. If the state has not preempted the field, or has specifically allowed local licensure, then the city may act to that extent.

16 December 1977

Loren Tucker, Esq.
Red Lodge City Attorney
Red Lodge, Montana 59068

Dear Mr. Tucker:

You have requested my opinion on the following questions regarding the application of Red Lodge City Ordinance No. 678:

1. May the city license persons engaged in interstate commerce?

2. May the city license beer distributors?

3. May the city license persons or occupations regulated by the State, especially barbers, attorneys and real estate agents?

Ordinance 678 requires an annual license from the City before any "occupation, industry, trade, pursuit, profession, vocation or business" may be conducted. An annual fee schedule is established for various classes of businesses. All licensed businesses are subject to "reasonable regulation, inspection, control and supervision as is necessary to insure the welfare, safety, and health" of the City's residents. Section 8 provides:

> No provision of this ordinance shall be construed as an attempt to regulate any occupation, industry, trade, pursuit, profession, vocation or business which is exempted from regulation or control of local government by law of the State of Montana or the United States.

A municipality without self-government powers under Article XI, §6 of the Montana Constitution has the powers of a municipal corporation, and such legislative, administrative and other powers as are provided by law. A municipality has subordinate powers of legislation to assist in the civil government of the state, and to regulate and administer local and internal affairs. Billings v. Herold, 130 Mont. 138, 141 (1956).

The "general welfare" provisions of Section 11-901 et seq., R.C.M. 1947, "constitute a general grant of power to a city to pass all laws necessary for its government and management which do not contravene constitutional or statutory provisions." State v. City Council, 107 Mont. 216, 219 (1938).

Section 11-903 empowers a city to "license all industries, pursuits, professions, and occupations," and Section 11-904 empowers the city to fix the amount, terms and manner of issuing and revoking licenses in the public interest.

No city can make general state laws inoperative by ordinance, Billings v. Herold, supra, 130 Mont. at 142, and a city can only exercise powers not in conflict with general law "unless the power to do so is plainly and specifically granted." Stephens v. City of Great Falls, 119 Mont. 368, 373 (1946). The regulatory power of a city was summarized in State ex rel. Libby v. Haswell, 147 Mont. 492, 494-95 (1966):

> It is fundamental that the power of a city to enact ordinances in only such power as has been given to it by the legislature of the state, and that the powers given to it are subordinate powers of legislation for the purpose of assisting in the civil power of the government of the state and to regulate and administer local and internal affairs of the community. Municipal ordinances must also be in harmony with the general laws of the state, and with the provisions of the municipal charter. Whenever they come in conflict with either, the ordinance must give way. In addition, when the state has exercised a power through its statutes which clearly show that the state legislature deems the subject matter of the legislation to be a matter of general statewide concern rather than a purely local municipal problem, the city is then without the essential authority or power to pass or adopt any ordinance dealing with that subject matter.

These principles contribute the background for consideration of your questions.

Your first question concerns the city's authority to license persons engaged in interstate commerce. Pursuant to Article I, §8 of the United States Constitution, Congress is given the power to regulate interstate commerce. Therefore, state and local power to regulate interstate commerce is limited, particularly where Congress has acted to preempt a field. Interstate Transit Co. v. Derr, 71 Mont. 222, 228 (1924). A state may exercise reasonable, non-discriminatory police power over one engaged in interstate commerce, even though that regulation may indirectly burden or interfere with interstate commerce. Welch v. Dean, 49 Mont. 263, 267 (1914); Butte v. Roberts, 94 Mont. 482, 488 (1933). Local regulation of the "purely local" aspects of interstate business is allowed, Minnehoma Finance Co. v. VanOosten, 198 F. Supp. 200, 208 (D. Mont. 1961), as is regulation of the local manufacture of a product which is destined for interstate commerce. Dunbar Stanley Studios v. Alabama, 393 U.S. 537, 541 (1969). As a basic premise, however, a state may not exact conditions upon the right to engage in interestate commerce, McNaughton v. McGirl, 20 Mont. 124 (1897); Union Interchange, Inc. v. Parker, 138 Mont. 348, 359-60 (1960), and may not impose regulations which directly burden interstate commerce or discriminate against it. Minnehoma

Finance Co. v. VanOosten, 198 F. Supp. 200, 207 (D. Mont. 1961). An unreasonable or undue burden in this sense is said to be one which "materially affects interstate commerce where uniformity of regulation is necessary." Union Pac. R. Co. v. Woodahl, 308 F. Supp. 1002, 1007 (D. Mont. 1970).

Your first question must be answered on a case-by-case basis in reference to these legal principles, since no specific situation of interstate commerce was set out in your request for this opinion.

Your second question involves the licensing of beer distributors. Section 4-4-406 of the Alcoholic Beverage Code contains specific authority for local licensing:

> The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverage license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

The city may act pursuant to this licensing authority to license beer distributors. Section 4-4-201(2) further empowers local government to define those areas in which alcoholic beverages may or may not be sold. This does not, however, grant the power to restrict the number of licenses authorized by state law.

While the legislature has granted these exceptions to its preemption of liquor regulation (State ex rel. Libby v. Haswell, 147 Mont. 492, 499 (1966)), the power to require a local license does not confer the "power to make state licenses ineffective by refusing local ones." McCarter v. Sanderson, 111 Mont. 407 (1941). A city license must be consistent with state and federal law; it must be reasonable; and it must not "inhibit" the issuance of a license by the state nor "nullify" a state license. Stephens v. Great Falls, 119 Mont. 368, 379 (1946).

Your third question concerns city licensing of persons or enterprises already licensed by the state. As a general matter, state laws are superior to local laws, and if there is state preemption of a field, local regulation is ousted.

State ex rel. Libby v. Haswell, 147 Mont. 492, 494-95 (1966). Thus, the statutes, if any, governing any given enterprise must be consulted to determine whether there has been state preemption. If not, local activities of these enterprises are subject to local police power.

Section 66-1934(4), governing real estate agents, specifically provides:

> No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

Almost identical language applicable to attorneys is found in Section 93-2010. There is no comparable exclusion of local regulation in the barber statutes, Section 66-401 et seq. However, these statutes construed as a whole evidence a comprehensive scheme of state regulation of that industry to such an extent as to preempt local regulation under the principles of State ex rel. Libby v. Haswell, supra. The only specific mention of local regulation is a requirement that barbershops comply with local sewer and water regulations. Section 66-403(11). Thus, the statutes on each state-regulated business or profession must be consulted as specific questions arise.

THEREFORE, IT IS MY OPINION

1. A city can license the local aspects of interstate commerce, but may not make a local license a condition to engaging in interstate commerce, nor impose direct burdens or impediments on interstate commerce.

2. A city may license a beer distributor pursuant to Section 4-4-406, R.C.M. 1947, but may not thereby limit or make ineffective a state license.

3. A city is precluded from licensing an enterprise whose regulation has been preempted explicitly or impliedly by the state. If the state has not preempted the field, or has specifically allowed local licensure, then the city may act to that extent.

Very truly yours,

MIKE GREELY
Attorney General

ABC/so

VOLUME NO. 37 OPINION NO. 101
COUNTIES - Budgeting; fixing officials' salaries; interest on unpaid warrants;
PUBLIC FINANCE - County budget; interest on unpaid county warrants;
PUBLIC OFFICERS - Computing salaries of county officers;
TAXATION - Taxable value of property as basis for county officers' salaries.
SECTIONS - 16-1810, 16-1904, 16-2604, 25-605, 25-609.1, 53-102, 84-406, 84-3808, 84-3809, 84-429.14, R.C.M. 1947.

HELD: 1. The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-1978 fiscal year pursuant to Section 25-605, R.C.M. 1947, is the taxable value determined under assessment procedures in Section 84-406, R.C.M. 1947, for the current 1977-1978 fiscal year.

2. Pursuant to Sections 25-605 and 25-609.1, R.C.M. 1947, salaries of county officers must be fixed by July 1. In the event a county is unable to fix the salary on or before that date, county officials are entitled to salary increases retroactive to July 1.

3. Counties may budget for and pay interest on unpaid, registered warrants.

20 December 1977

Chris Gardner, Chairman
Art Woods, Commissioner
Milan Kovich, Commissioner
Board of County Commissioners
Lewis and Clark County
Courthouse Building
Helena, Montana 59601

Dear Commissioners Gardner, Woods and Kovich:

You have requested my opinion concerning the following questions:

1. In computing the salaries of county officials for the fiscal year commencing July 1, 1977, pursuant

to Section 25-605, R.C.M. 1947, is a county required to use the taxable valuation of county property prepared for use in the 1977-78 fiscal year, or may the county use the taxable valuation of the prior fiscal year?

2. When a county finally adopts a budget for the 1977-1978 fiscal year, are any salary increases to which county officials may be entitled under Section 25-605, R.C.M. 1947, payable retroactively to July 1, 1977?

3. If a county is unable to adopt a budget and fix the tax levy on the second Monday of August because of the unavailability of necessary taxable valuation information, may the county budget for and pay interest on unpaid, registered warrants which result from the county's inability to adopt a budget and levy and collect taxes?

I

Your first question arises as the result of the amendment of Section 25-605, R.C.M. 1947, by Section 1 of Chapter 493, Laws of 1977 (Senate Bill 192). As amended, that Section provides in relevant part:

> Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in 16-3302, shall be based on the population and taxable valuation of the county as of January 1, 1977, in accordance with the following schedule: (Emphasis supplied.)
>
> * * *

The schedule set forth in Section 25-605 links salaries of county officials to two factors; first, county population and, second, county taxable valuation. There is a schedule for each factor and, generally, as population and taxable valuation increase so do salaries. An amount taken from each schedule is plugged into a formula which is used to compute actual salaries.

The 1977 amendment increased salary schedules and provided

that one-half of the increase is payable commencing the 1977-1978 fiscal year and the remaining one-half commencing the 1978-1979 fiscal year. Section 2 of Chapter 493, Laws of 1977. The 1977 amendment also added the words "as of January 1, 1977."

Prior to the 1977 amendment it was settled law that the taxable value referred to in Section 25-605 was the value used for the new fiscal year. In the case of Brown v. Board of County Commissioners, 165 Mont. 391, 529 P.2d 328 (1974), the Montana Supreme Court was confronted with the identical question presented here as it pertained to fixing county officials' salaries for the 1973-1974 fiscal year. The Court pointed out that Section 25-605 must be read in conjunction with Section 25-609.1, R.C.M. 1947, which requires the Board of County Commissioners to fix official salaries for the next fiscal year on or before July 1. Section 25-609.1 has not been amended since the Brown decision and provides:

> Commissioners to fix salaries according to salary schedule. The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year. (Emphasis supplied.)

The Court read Section 25-609.1 to impose "a clear legal duty to compute the taxable valuation (for use during the next fiscal year) prior to July 1, the first day of the next fiscal year * * *," 165 Mont. at 393, notwithstanding other statutory provisions which permit reporting of valuation figures to the Department of Revenue as late as the second Monday in July (Section 84-406, R.C.M. 1947), and the fixing of the tax rate by county boards of commissioners as late as the second Monday in August (Section 84-3805, R.C.M. 1947). With regard to the fiscal year July 1, 1973 to June 30, 1974, the Court went on to hold that Section 25-609.1 required computation of taxable valuation for the 1973-1974 fiscal year before July 1, 1973. That new, 1973-1974 valuation, was to be used in computing officials' salaries under

Section 25-605 for the 1973-1974 fiscal year. Brown requires computation of 1977 taxable value before July 1, 1977 and the fixing of county officials' salaries on or before the same date.

If Brown is still viable law, counties must use the new, 1977-1978 taxable value as the basis for computing county officials' salaries under Section 25-605 for the 1977-1978 fiscal year. The present question is whether the 1977 amendment which inserted "as of January 1, 1977" compels a different result than that reached in Brown. I conclude it does not.

The taxable valuation of a county is determined pursuant to assessment procedures set forth in Section 84-406, R.C.M. 1947, which requires the Department of Revenue (DOR) or its agents, beginning January 1 of each year, to assess all property in each county which is subject to taxation. County Assessors are agents of DOR for purposes of assessing county property and reporting valuation. Section 84-402(2), R.C.M. 1947. The assessment procedure continues over a several month period. Final valuations must be reported to DOR no later than the second Monday of July of the same year, Section 84-406, R.C.M. 1947, and is the basis for determining the rate of tax levy for the fiscal year beginning July 1 of each year, Section 16-1904(6), R.C.M. 1947.

The question raised by the 1977 Amendment to Section 25-605 is whether the taxable valuation of a county "as of January 1, 1977" is the valuation as already calculated and existing on said date - i.e., the valuation for the old 1976-1977 fiscal year - or the valuation determined under assessment proceedings which commenced on January 1, 1977 - i.e., the valuation used for the new 1977-1978 fiscal year. It is my opinion that the amendment requires the use of the new taxable value.

Although the tax assessment process begins January 1 and continues until July 1, all property, with minor exceptions, is valued as of January 1 of the assessment year. In the case of motor vehicles, specific provision is made requiring the assessment of vehicles "as of January 1," although the actual assessment may be made on the vehicle registration date. Sections 84-406(4)(a) and 53-162, R.C.M. 1947. Section 84-406, R.C.M. 1947, requires as a general rule,

that property is to be assessed "to the person by whom it was owned * * * at 12 midnight of January 1 next preceding" and the entire section is entitled "GENERAL ASSESSMENT DAY." (Emphasis added.) I am informed by the Deparment of Revenue that it interprets Section 84-406, R.C.M. 1947, as requiring property to be valued as of January 1 of the assessment year, whatever date the assessment is actually made, and has implemented this interpretation in its rules and in practice. I concur with DOR's interpretation, which finds further support in the fact that the statutory lien for property taxes attaches at 12 midnight, January 1 of each year, Sections 84-3808 and 84-3809, R.C.M. 1947.

Since 1965, the Legislature has increased salary levels of county officers at two year intervals. Chapter 216, Laws of 1965; Chapter 231, Laws of 1967; Chapter 284, Laws of 1969; Chapter 265, Laws of 1971; Chapter 391, Laws of 1973; Chapter 102, Laws of 1975; Chapter 493, Laws of 1977. In conjunction with the 1975 increase the Legislature attached a provision making the increase payable in two steps, one-half during the 1975-1976 fiscal year and the remaining one-half the next fiscal year. Section 2 of Chapter 195, Laws of 1975. The legislation, however, did not change the language of the first paragraph of Section 25-605 which made salaries payable "based on population and taxable valuation in accordance with the following schedule." This created potential conflict with Brown. In Brown, the Supreme Court held that salaries must be recomputed each year, based on the new population and taxable valuation figures. Thus, under the Brown interpretation, a significant increase in population and/or taxable value from the 1975-1976 fiscal year to the 1976-1977 fiscal year would have entitled county officers to increases for the 1976-1977 year in addition to increases which were computed on the basis of 1975-1976 values. Arguably, the Legislature did not intend two separate salary increases when it enacted the 1975 amendment but intended that the salary level for both the 1975-1976 and 1976-1977 fiscal years be fixed by reference to the population and taxable valuation figures for the 1975-1976 fiscal year, with the increase payable in two steps. The clear effect of the 1977 amendment is to eliminate the potential for conflicting interpretations, making it clear that salary levels for the two subsequent fiscal years are based on the population and taxable value figures for the first fiscal year only.

Since taxable value of property as of January 1, 1977, is

that value which has been determined pursuant to Section 84-406 for use in the 1977-1978 taxable year, such value must be used by the county in fixing county officers' salaries under Section 25-605.

II

Your second question arises as the result of the failure to complete the tax assessment process by the July 1 deadline specified in Section 25-609.1 and Brown. It is my understanding that this failure was common to several counties and was caused in large part by ongoing revaluation required under Section 84-429.14, R.C.M. 1947. Since the taxable value for the 1977-1978 fiscal year was unavailable on July 1, salaries of county officers could not be computed until a later date. Nevertheless, the salaries, once computed, are retroactive to July 1. Section 2 of Chapter 195, Laws of 1977, is explicit and mandatory:

> One-half of all salary increases provided for in section 1 (section 25-605) shall be effective July 1, 1977, and the remainder of such increases shall be effective July 1, 1978. (Emphasis supplied.)

See also Brown, 165 Mont. at 394-395.

III

Your final question concerns budgeting for and paying interest on unpaid, registered warrants which result from a county's inability to adopt a budget and levy taxes on the second Monday of August. It is my understanding that several of the counties have been unable to adopt budgets by the deadline set in Section 16-1904(6), R.C.M. 1947, because of the ongoing property reassessment and delays in computing a final valuation of property. In some counties budget adoption has been significantly delayed and in turn tax collections have been delayed.

The Legislature has made express provision for unpaid warrants. Section 16-1810, R.C.M. 1947, provides:

> Warrants--specification-presentation and payment. Warrants drawn by order of the board on the county treasurer for the current expenses during each year must specify the liability for which they are drawn and when they accrued, and must be paid in the order of

> presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

Boards of county commissioners are authorized to pay interest on unpaid warrants. Section 16-2604, R.C.M. 1947, provides:

> Registry of warrants-interest. When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law. (Emphasis added.)

Since counties have authority to pay interest on warrants, provision for such interest is an appropriate budget item.

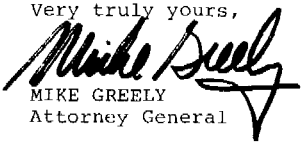
THEREFORE, IT IS MY OPINION:

1. The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-1978 fiscal year pursuant to Section 25-605, R.C.M. 1947, is the taxable value determined under assessment procedures in Section 84-406, R.C.M. 1947, for the current 1977-1978 fiscal year.

2. Pursuant to Sections 25-605 and 25-609.1, R.C.M. 1947, salaries of county officers must be fixed by July 1. In the event a county is unable to fix the salary on or before that date, county officials are entitled to salary increases retroactive to July 1.

3. Counties may budget for and pay interest on unpaid, registered warrants.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 102

HOSPITAL DISTRICTS - Subdivisions of the county;
HOSPITAL DISTRICTS - Employees entitled to vacation and sick leave benefits same as county employees;
COUNTY GOVERNMENT - Hospital Districts as subdivision thereof;
SECTIONS 59-1001 and 59-1008, R.C.M. 1947;

HELD: Under Section 59-1001 et seq., R.C.M. 1947, employees of county hospital districts are employees of a subdivision of the county and are therefore entitled to receive the vacation and sick leave benefits provided public employees.

26 December 1977

David E. Fuller, Commissioner
Department of Labor & Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Fuller

You have requested my opinion concerning the following question:

Are employees of county hospital districts entitled to receive sick and annual leave benefits as set forth in sections 59-1001 through 59-1008, R.C.M. 1947?

Section 59-1001 provides in pertinent part:

Annual Vacation Leave
(1) Each full time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment.

Section 59-1008 provides:

Sick Leave
(1) Each full time employee of the state or of any county or city thereof is entitled to and shall earn sick leave credits from the first full pay period of employment.

To qualify for vacation and sick leave benefits under the above provisions, an individual must be an employee of the state, county, or city. Section 59-1007.1(2) defines employee as "...any person employed by the state, county or city government."

An employee of a subdivision of the state or county is considered, for the purpose of this chapter, to be an employee of the governmental unit involved. Teamsters Local #45 v. Cascade County School District #1, 162 Mont. 227, 511 P.2d 339 (1973); See also, Longpre v. School District No.2, 151 Mont. 345, 443 P.2d 1; Fitzpatrick v. State Board of Examiners, 105 Mont. 234, 70 P.2d 285.

The answer to your question depends upon whether or not county hospital districts are political subdivisions of the county. The statutes concerning hospital districts are codified in Section 16-4301, et seq., R.C.M. 1947. Each district may encompass all or a portion of a particular county. They are established by vote of the district residents and are financed by public funds in the form of a property tax levied upon the property within the district. Hospital districts are governed by a board of trustees who have administrative power and authority under Section 16-4308. Among other powers, that section gives the district authority to:

> (1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon.

Although hospital districts are relatively autonomous, it is my opinion that they are political subdivisions of the county for the purposes of Sections 59-1001 through 59-1008.

Sections 16-4302 through 16-4307 provide the board of county commissioners an integral role in the formation of hospital districts. A petition for the establishment of the district is first directed to the board of county commissioners and the board then conducts a hearing. The board may make boundary changes in the proposed district before calling for an election. After the voters have approved a proposed hospital district, it is then encumbent upon the board to organize the district, call for the election of trustees, and in certain instances the board of county commissioners has authority to appoint individuals as district trustees.

County commissioners have exclusive authority to levy taxes for the maintenance of a hospital district. Section 16-4309 provides in pertinent part:

> The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees.

Section 16-4310 provides that the county treasurer shall be the treasurer for the hospital district and maintain a detailed account of all tax monies paid into the account. The board of county commissioners administers the procedure for withdrawal of a portion of the district as well as the annexation and dissolution procedures of the district. Section 16-4313 further provides:

> "...any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county. "

By virtue of the relationship between the county and the district, it is clear that a hospital district is a subdivision of the county, created to provide the public with hospital service.

In an analagous situation, the Montana Supreme Court in Teamsters Local #45 v. Cascade County School District No. 1, supra, held that school district employees, other than teachers, were entitled to vacation benefits under Section 59-1001. In its decision the Court gave effect to a long line of Montana cases holding that a school district is a political subdivision and instrumentality of the state. In construing Section 59-1001 the court went on to say at P. 280:

> The legislature used the term employees in its generic sense to include all employees of the state or employees of state agencies of which a school district is included.

Significantly, Section 16-4307 provides that elections for hospital district trustees are to be conducted in the same manner as elections for school district trustees.

Opinions of the Attorney General, Vol. 35, No. 71, held that a fire district is a subdivision of the county and that therefore employees of the fire district were entitled to vacation and sick leave benefits under Section 59-1001, et seq. R.C.M. 1947. That opinion states:

> The plain, ordinary meaning of the language in Sections 59-1001 through 59-1009 indicates an obvious legislative intent to provide vacation and sick leave benefits to all public employees.

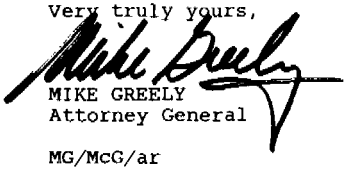
Employees of hospital districts are public employees who receive their compensation from public funds, and it has been held in other jurisdictions that employees who are paid with public funds are employees of the state or subdivisions thereof. Industrial Commission of Ohio v. Saner, 127 Ohio 366, 188 N.E. 559.

The statutes in question confer benefits upon "an employee of the state, or any county or city thereof". As hospital district employees are public employees of a political subdivision of the county, they are entitled to vacation and sick leave benefits as set forth in the above provisions.

THEREFORE, IT IS MY OPINION:

> Section 59-1001 et seq., R.C.M. 1947, employees of county hospital districts are employees of a subdivision of the county and are therefore entitled to receive the vacation and sick leave benefits provided public employees.

Very truly yours,



MIKE GREELY
Attorney General

MG/McG/ar

VOLUME 37 OPINION NO. 103

POLICE - Annuities for officers no longer employed;
POLICE DEPARTMENTS - Consolidated, purchase of retirement annuities;
RETIREMENT SYSTEMS - Police departments, purchase of annuities.
MUNICIPAL CORPORATIONS - Expenditure of state funds for police officers;
SECTIONS 11-1834, 11-1837, 16-2726, R.C.M. 1947; 35 Op. Atty. Gen. 72.

HELD: The town of Columbus may expend funds received pursuant to Section 11-1834, R.C.M. 1947 to purchase an annuity for former members of its police department even though the town now has a consolidated department.

28 December 1977

Richard Heard, Esq.
Town Attorney
Town of Columbus
Columbus, Montana

Dear Mr. Heard:

You have requested my opinion on the following question:

> May the town of Columbus, which has previously consolidated its police services pursuant to Section 16-2726, R.C.M. 1947, expend funds received pursuant to Section 11-1834, R.C.M. 1947, to purchase a retirement annuity for policemen no longer employed by the town?

Section 11-1834, R.C.M. 1947 provides for annual state payments to municipalities with police departments:

> At the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to Section 11-1919, R.C.M. 1947.

Under the terms of Section 11-1837 these funds so received are to be spent by a city or town not coming within the provisions of the police retirement law for one of two purposes: "for police training or to purchase pensions for members of their police department."

The town of Columbus consolidated its police department with the Stillwater County Sheriff's Department and formed a Department of Public Safety pursuant to Section 16-2726, R.C.M. 1947. As a result of this consolidation the members of the town's police department were no longer employed by the town.

You want to know if the funds received under Section 11-1834 can be used to buy an annuity for these discharged officers.

This office has determined in a previous opinion that cities and towns who have consolidated their law enforcement services, pursuant to Section 16-2726 have "police departments" within the meaning of Section 11-1834 and are therefore eligible to receive funds thereunder. 35 Opinions of the Attorney General 72.

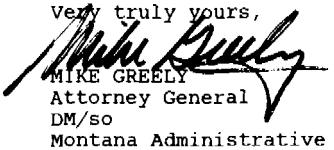
Therefore, is a purchase of an annuity for the benefit of former members of a police department a purchase of "pensions for members of [its] police department" within the meaning of Section 11-1837? It is the general rule of law that pension statutes are to be construed liberally in favor of the pensioner. Adams v. City of Modesto, 53 Cal.2d 833, 350 P.2d 529 (1960).

The purchase of an annuity for former members of the police department to reward them for long years of service and the sudden discontinuance of their employment is certainly an application of funds for which the police retirement system law was passed. Applying the liberal rule of construction the purchase of such an annuity is the expenditure of funds to "purchase pensions for members of [its] police department."

THEREFORE, IT IS MY OPINION:

The town of Columbus may expend funds received pursuant to Section 11-1834, R.C.M. 1947 to purchase an annuity for former members of its police department even though the town now has a consolidated department.

Very truly yours,



MIKE GREELY
Attorney General
DM/so

VOLUME 37 OPINION NO. 104

EMPLOYEES, PUBLIC - Code of ethics;
COUNTY OFFICERS AND EMPLOYEES - Code of ethics;
CORONER - Conflict of interest;
SHERIFF, DEPUTIES - Outside employment;
CONFLICT OF INTEREST - Public employees, code of ethics;
SECTIONS 39-1701 et seq., R.C.M. 1947;
OP. ATTY. GEN. Vol. 35, #92.

HELD:

1. A member of a county board breaches a fiduciary duty if he enters into a substantial financial transaction for personal business with a person he inspects or supervises in the course of his official duties.

2. The voluntary disclosure provisions of Section 59-1710, R.C.M. 1947 will serve to excuse an act which would otherwise be a violation of the Code of Ethics only if the individual involved is a member of the local governing body, or a state department head or member of a state quasi-judicial or rule-making board.

3. A county coroner who is also a mortician violates the provisions of Section 59-1707(2)(b), R.C.M. 1947 if he directs that a body be taken to a funeral parlor in which he has a substantial financial interest, unless he has no discretion to select the funeral parlor.

4. A deputy sheriff may accept employment as a security guard without violating Section 59-1707(2)(a), R.C.M. 1947.

5. A county employee breaches his fiduciary duty to the county if he engages in a substantial financial transaction for private business purposes with a county employee he supervises in the course of his official duties.

6. The Code of Ethics prohibits a county employee from using confidential information acquired in the course of his official duties to further his economic interest, but it does not prohibit a county employee from bidding

on county property being sold at public auction or limit the employees' ability to purchase tax deeds.

10 January 1978

The Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion on the following questions pursuant to your authority to issue advisory ethics opinions under Section 59-1711:

1. May a member of a county board enter into a partnership agreement with other individuals to develop property, which the board member owned prior to taking office, if the proposed development does not require action or approval by the board of which he is a member? The individual partners may from time to time appear before the board on entirely unrelated matters.

2. If a member of a county board may enter into such an arrangement, is he subject to the disclosure requirements of Section 59-1710, R.C.M. 1947?

3. Does the county coroner, who is also a mortician, violate the provisions of Section 59-1707(2)(b), R.C.M. 1947, when acting in his official capacity as coroner, if he directs that a body be taken to a funeral parlor in which he has an ownership interest?

4. May a deputy sheriff accept employment as a security guard on his own time without violating Section 59-1707(2)(a), R.C.M. 1947?

5. May a county employee employ in his private business a county employee he supervises in the course of his official duties without violating Section 59-1707(2)(a), R.C.M. 1947?

6. Does any provision of the Code of Ethics prohibit or limit the right of a county employee to bid on

> county property being sold at public auction, or to bid on or purchase tax deeds from the county?

The 1972 Montana Constitution directed the legislature to provide a code of ethics for government employees. Chapter 17, Title 59 was enacted by the 45th Legislature as a partial response to that mandate. Section 59-1701 provides that the purpose of the chapter is to establish a code prohibiting "conflict between public duty and private interest."

The ethical ramifications of public duty have received considerable scrutiny in the courts. See e.g. Schumacher v. City of Bozeman, 34 Mont. Rep. 1288 (1977). The United States Supreme Court in considering the rationale of a federal conflict of interest statute held:

> The obvious purpose of the statute is to insure honesty in the government's business dealings by preventing federal agents who have interests adverse to those of the government's from advancing their own interest at the expense of public welfare.

The Court also held that such statutes must be given broad interpretation:

> The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.

U.S. v. Mississippi Valley Co., 364 U.S. 520 (1961). See also, People v. Savaino, 335 N.E.2d 553 (Ill. 1975); Stigall v. City of Taft, 375 P.2d 289 (Cal. 1962).

The Montana Code of Ethics, Section 59-1701 et seq., provides that the holding of public office or employment is a

public trust. The Code prohibits certain activities, the commission of which constitutes a breach of the employee's fiduciary duty to the state. The measure of liability for fiduciary transgressions is provided in Section 86-310; the officer or employee may be required to account to the public for all profits, proceeds or the reasonable value of any benefit to him by virtue of his misconduct.

The prohibitions and penalties of the Code do not preempt prior statutory provisions which may make other activity by public employees unlawful. See for example the provisions of Section 59-501, R.C.M. 1947, regarding public contracts, and the criminal provisions for official misconduct, Section 94-7-401, especially the provisions for knowingly performing an act prohibited by law.

Our Code recognizes a distinction between legislators, other officers and employees of the state government and officers and employees of local government. The Code recognizes that some actions are "conflicts per se between public duty and private interest," while other actions may or may not pose such conflicts depending upon the particular circumstances. Section 59-1701.

While some actions are described as being "conflicts per se," it is necessary to look at each particular transaction or relationship in conjunction with the surrounding circumstances before a determination can be made as to whether or not a breach has occurred. For example, a number of prohibitions require a "substantial" financial transaction or an act "substantially" affecting economic benefit. In those instances, what is "substantial" may depend largely on the particular facts and circumstances involved.

Your first two questions describe a situation where a member of a county board enters into a partnership agreement with other individuals to develop property. The proposed development does not require action or approval by the board, but the individuals with whom the board member proposes to associate have appeared before the board in the past and may in the future appear and require board approval regarding matters not related to the proposed property development.

Section 59-1707, "Rules of Conduct for Local Government Officers and Employees" provides:

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:
(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or
(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 59-1710.

Section 59-1702(3) specifically provides that a member of a "board, commission or committee" is an "employee" under the meaning of the Code. A partnership to develop property is a "substantial financial transaction" under the definition of "financial interest" established in Sections 59-1702(4)(a) and 59-1702(4)(d).

For the partnership to violate the Code however, it is necessary to determine whether the proposed partners are persons whom the board member "inspects or supervises in the course of his official duties." A fundamental principle of statutory interpretation is that words should be construed favoring the plain meaning of the language used. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). Webster's New International Dictionary, Second Edition, defines the word "inspect" as:

> to look upon; to view closely and critically, esp. so as to ascertain quality or state, to detect errors, etc.; to scrutinize; (2) to view and examine officially.

The same volume defines "supervise" in pertinent part "to oversee for direction; to superintend; to inspect with authority." To determine whether the board member inspects

or supervises the prospective partner, it is necessary to examine the duties of the particular board in question and interpret the facts in accord with the statute on a case by case basis. If the board member does "inspect or supervise in the course of his official duties" one of his potential partners, then engaging in that business activity would be a breach of fiduciary duty under the provisions of Section 59-1707(2)(a).

Your second question refers to voluntary disclosure. If it is determined above that no fiduciary breach is involved and that the board member may enter into such an arrangement, then he is subject to the provisions of Section 59-1707(2)(b), and may not perform an official act which directly and substantially affects a business in which he has a substantial interest. Section 59-1710 does allow a member of a local governing board to perform an "official act" in certain circumstances if he complies with the disclosure procedures of Section 59-1710.

The disclosure provisions of Section 59-1710 provide:

> A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

Section 59-1710 standing alone does not state that a public officer or employee is relieved of his obligations for breach of fiduciary duty by following the disclosure provisions of that section. As a practical matter, this section has no effect on a potential fiduciary breach other than to show good faith on the part of the individual disclosing. Section 59-1711 provides that the Secretary of State may issue advisory opinions. However, nothing in Section 59-1711 gives the disclosing party a right to rely on opinions the Secretary may issue.

There are only two instances in Chapter 17 where voluntary disclosure exonerates a potential breach. Section 59-1706(3), Rules of Conduct for State Officers and Employees states:

> (3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act, notwithstanding subsection (2)(e), if his participation is necessary to the administration of the statute and if he complies with the voluntary disclosure procedures under 59-1710.

Section 59-1707(3), Rules of Conduct for Local Government Officers and Employees, has a similar provision:

> (3) A member of a governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure provision procedures under 59-1710.

Other than the two quoted provisions, nothing in Chapter 17 permits a public officer or employee to perform an act which would be a fiduciary breach by conforming to the voluntary disclosure provisions of 59-1710. Legislative intent must be determined from the actual words used in the statute and statutory interpretors are not permitted to insert language possibly omitted. In re Transportation of School Children, 117 Mont. 618, 161 P.2d 901 (1945).

The answer to your second question can be answered by review of the Code of Ethics. You will note from the above quoted provisions of Section 59-1707(3), only members of a local governing body are permitted to perform an official act by complying with the voluntary disclosure procedures of Section 59-1710. If the county board concerned is the board of county commissioners then the disclosure provisions under Section 59-1707(3) apply. If the individual is a member of any other county board the disclosure provisions of that section will not exonerate an official act performed in derrogation of fiduciary responsibilities.

Question three involving county coroners who are also morticians was addressed in 35 Opinions of the Attorney General, No. 92 which held that Section 59-501, prohibiting county officers from being personally interested in any contract made in their official capacity, did not prohibit

the county coroner, who is also a licensed mortician, from assigning coroner cases to a mortuary in which he had an interest. Section 59-501(2)(d) specifically excludes contracts for professional services. It was held that a licensed mortician is a professional, and therefore contracts entered into by licensed morticians were contracts for professional services and exempt by the statute.

However, the Code of Ethics, specifically Section 59-1707(2)(b), was enacted subsequent to that opinion and on its face prohibits such activity by a county coroner. A county coroner is a local government officer and employee as defined by Sections 59-1702(3) and (6). The facts of each case must be examined to determine if there is a substantial financial interest involved, as well as a direct and substantial economic affect when a coroner directs that a body be taken to a funeral parlor in which he has an ownership interest. Clearly, a majority or sole ownership interest is substantial but a 10% ownership interest may not be.

An official act is required for the prohibitions of Section 59-1707(2)(b) to apply. Therefore, an additional consideration is raised by your question. Section 59-1702(5) defines "official act" as:

> ...a vote, decision, recommendation, approval, disapproval, or other action including inaction which involves the use of discretionary authority. (Emphasis supplied).

Regarding duties of the coroner, Section 82-443 provides:

> When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death ocurred or the body was found shall cause it to be decently interred. (Emphasis supplied)

It is clear that a coroner has the absolute responsibility of seeing the body is given a decent burial. But there are circumstances where the coroner has no discretion. For example, in many communities throughout the state the coroner is the only mortician in the jurisdiction. A coroner only has jurisdiction within his own county. See e.g., Sections 95-812 and 16-2406. In counties where the only mortician is the coroner, the only feasible manner in which a coroner can perform the statutory duties of Section

82-443 may be to refer the corpse to the mortuary with which he is associated. That is not a matter reasonably within the discretion of the coroner and therefore is not strictly an official act within the meaning of the Code of Ethics. However, only in those limited instances where no discretion is involved will the coroner not be in violation of Section 59-1707(2)(b).

In response to the fourth question, a deputy sheriff may work as a security guard on his off-duty hours without violating Section 59-1707(2)(a). A deputy sheriff is an employee of local government and his work as a security guard probably would be a substantial financial transaction under the definitions in the chapter. However, his work as a security guard is not a financial transaction with a person whom he inspects or supervises in the course of his official duties as the terms "inspect" or "supervise" are defined above. Consequently, there is no violation of that particular statute.

In response to your fifth question, a county employee who supervises a number of other county employees may not under the Code employ in his private part-time business, if it is a "substantial financial transaction," another county employee whom he supervises in the course of his official duties. Again, Section 59-1707(2)(a) prohibits a county employee from engaging in a substantial financial transaction with a person he inspects or supervises. In pertinent part Section 59-1702(5) defines "financial interest" as an interest held by an individual which is:

> (c) an employment or perspective employment for which negotiations have begun.

The issue of whether the particular financial transaction described in your question is to be considered substantial, however, will have to be decided on a case by case basis. Consideration should be given to the nature and extent of the transaction; the nature and extent of the employee-supervisor relationship; and the amount of remuneration in proportion to the individual salaries involved, as well as the intent and purpose of the Code.

In response to your last question, there is no provision in the Code of Ethics which strictly prohibits or limits the right of a county employee to bid on county property being sold at public auction or bid on or purchase tax deeds being sold by the county. However, under the rules of conduct for

all public employees, enumerated in Section 59-1704, an employee may not:

> (a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests.

This provision should be liberally construed. U.S. v. Mississippi Valley Co., supra. In addition the provisions of Sections 59-501 and 59-502 may apply in some situations. Any employee purchasing property or acquiring property through the county must certainly be mindful of the potential danger of conflict and act accordingly.

THEREFORE, IT IS MY OPINION:

1. A member of a county board breaches a fiduciary duty if he enters into a substantial financial transaction for personal business with a person he inspects or supervises in the course of his official duties.

2. The voluntary disclosure provisions of Section 59-1710, R.C.M. 1947 will serve to exonerate an act which would otherwise be a violation of the Code of Ethics only if the individual involved is a member of the local governing body, a state department head or member of a state quasi-judicial or rulemaking board.

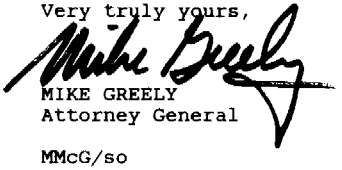
3. A county coroner who is also a mortician violates the provisions of Section 59-1707(2)(b), R.C.M. 1947 when he directs a body be taken to a funeral parlor in which he has a substantial financial interest, unless he has no discretion to select the funeral parlor.

4. A deputy sheriff may accept employment as a security guard without violating Section 59-1707(2)(a), R.C.M. 1947.

5. A county employee breaches his fiduciary duty to the county if he engages in a substantial financial transaction for private business purposes with a county employee he supervises in the course of his official duties.

6. The Code of Ethics prohibits a county employee from using confidential information acquired in the course of his official duties to further his economic interest, but it does not prohibit a county employee from bidding on county property being sold at public auction or limit the employees' ability to purchase tax deeds.

Very truly yours,



MIKE GREELY
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MMcG/so